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Court : Chennai Madurai

Decided On : Jun-02-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl.RC(MD) No. 475 of 2015

Appellant : Sivamani

Respondent : State, rep. by the Inspector of Police, Madurai and Others

Judgement :

(Prayer: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records of the learned Judicial Magistrate No.II, Madurai in Cr.M.P.No.210 of 2015 dated 21.01.2015 and set aside the same and further to direct the learned Judicial Magistrate No.II, Madurai to grant interim custody of the ingot to the petitioner.)

1. This revision arises out of dismissal of Criminal M.P. No.210 of 2015 filed by the defacto complainant in Crime No.1093 of 2014, previously, on the file of Oomatchikulam Police Station, Madurai now, on the file of Tallakulam Police Station, Madurai.

2. There are A1 and A2 in this case. They are concerned with a robbery case reported in Crime No.1093 of 2014 under Section 392 I.P.C. The revision petitioner/Sivamani/defacto complainant while walking on the road in Pamba Nagar, two unidentified persons came in a motor bike, the pillion-rider snatched

her gold chain weighing 5 sovereigns from her neck. The bike sped away along with the criminals. Sivamani gone to Oomatchikulakam Police Station and reported this crime. It was registered in Crime No.1093 of 2014 under Section 392 I.P.C. On 29.11.2014 A.1 and A2 were arrested in connection with some other case. Based on the information in the confessional statement made in the said case it came to light that A1 and A2 were also involved in the Pamba Nagar chain snatching case. In the course of investigation, Police recovered gold ingot weighing 5 sovereigns, which is said to have been converted from the gold chain of Sivamani. The ingot was produced before the learned Judicial Magistrate No.II, Madurai.

3. In the said Court the defacto complainant filed Cr.M.P.No.210 of 2015 under Section 451 Cr.P.C. for the interim custody of the said gold ingot.

4. The learned Magistrate dismissed the petition on the grounds that now it is a gold ingot and the petitioner has no document to confirm that the ingot come out of her 5 sovereigns of gold chain.

5. Aggrieved, Sivamani has directed this revision.

6. The learned counsel for the petitioner would submit that a reading of the confession of A2 would clearly show that they have snatched 5 sovereigns of chain from the revision petitioner and it was given to a gold smith. The gold chain had gone, but a gold ingot has came in. The learned counsel also would submit that the prosecution agency also confirms such dawn of the gold ingot out of the gold chain. Further, neither the accused nor any one staked ownership to the said gold ingot. Thus, the revision petitioner is entitled to the return of the gold ingot. Thus, the order of the learned Judicial Magistrate No.II, Madurai is not in accordance with law.

7. On the other hand, the learned Government Advocate (Criminal side) would submit that the accused are involved in several property offences. Having taken note of the fact that no document has been produced by the defacto complainant, the Magistrate has dismissed the petition.

8. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.
9. Women have special attention towards jewelry, more particularly to gold jewelry. Even if the jewelry was snatched and it was converted to another form like an ingot, they will not fade away from their memory. There is no wrong in it.
10. In property offence cases stolen properties may be misappropriated or converted into another form, yet they will be case property. Investigation Officer cannot ignore the converted item. He is bound to seize it.
11. In this case, the revision petitioner is residing in Pamba Nagar, Madurai. On the occurrence day, while she was walking on the road, two unidentified persons, who came in a motor bike have snatched her gold chain weighing 5 sovereigns. She lodged complaint with the Oomatchikulam Police Station. On 29.11.2014, A1 and A2 Manickavasagam and Suman were arrested near Thirupalai in connection with some other property offence. A2 gave confessional statement to the investigation officer. In it, he had disclosed about he having snatched the gold chain from a woman at Pampa Nagar, took her 5 sovereigns gold chain to a goldsmith, who made a gold ingot out of that and the accused had kept the ingot in his home. It was seized by the Investigation Officer. It is the case property in this case. That is why the petitioner wants interim custody of the same.
12. Confessional statement to Police is inadmissible to prove a criminal charge. It is barred under Section 25 of the Indian Evidence Act. However, as per its Section 27 it is admissible to the extent permitted therein. Incriminating portion in a confessional statement cannot be used to convict a person. But it can be referred to for any other purposes. For instance, for return of property, for question of sentence it can be referred to.
13. Now, in this case, in order to find out whether the gold ingot came out of the 5 sovereigns chain said to have been snatched away from the defacto complainant, we can refer to the confessional statement of A2. As already stated there is clear cut information in the confessional statement that they were involved in Pampa Nagar chain snatching case, 5 sovereigns gold chain had been snatched from a

woman, and a goldsmith had converted her 5 sovereigns gold chain into a gold ingot. The said averments in the confessional statement with regard to the gold ingot has not been disputed by the prosecution. Neither the accused nor any one sought for the ingot. Thus the materials on record shows that the gold ingot came out of the 5 sovereigns gold chain of the defacto complainant.

14. The principles laid down by the Hon'ble Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat* [2003 (1) CTC 175 (SC)] apply to this case.

15. Now it is ordered as under:

i. This criminal revision is allowed.

ii. The Order, dated 21.01.2015, passed in Cr.M.P.No.210 of 2015, by the learned Judicial Magistrate No.II, Madurai, is set aside.

iii. The learned Magistrate will give interim custody of the property viz., 5 sovereigns of gold ingot to the revision petitioner.

iv. The revision petitioner will execute a personal bond for Rs.1,25,000/- (Rupees One Lakh and twenty five thousand only) to the satisfaction of the said Magistrate.

v. Until final property order is passed by the Trial Court the revision petitioner shall keep the ingot as it is.

vii. The revision petitioner shall cause the production of the ingot as and when so ordered by the trial Court.

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