

R.Chellapandian Vs. 1.State Through

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Court : Chennai

Decided On : Feb-02-2015

Judge : M.Sathyanarayanan

Appellant : R.Chellapandian

Respondent : 1.State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 02.2015 CORAM THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
CRL.R.C.(MD)No.733 of 2013 R.Chellapandian : Petitioner Vs. 1.State through
The Inspector of Police, CCIW, Theni, (In Crime No.3 of 2006) 2.The Secretary,
MD Special 188, Ramakrishnapuram Primary Agricultural Co-operative Bank,
Ramakrishnapuram, Uthamapalayam Taluk, Theni District. 3.S.P.Dinakaran
4.Mythili 5.Manikandan (Died) 6.Muthoot Finance Corporation Private Limited,
Bodinayakannur Branch, Bodi. [R-6 impleaded as per the order of this Court dated
18.12.2014 made in M.P.(MD)No.1 of 2014 in CrI.R.C.(MD)No.733 of 2013]. :
Respondents Prayer Criminal Revision Case is filed under Section 397 r/w 401 of
Code of Criminal Procedure praying to call for the records relating to the order
dated 06.08.2013 made in Cr.M.P.No.6467 of 2012 in C.C.No.134 of 2008 on the
file of the learned Judicial Magistrate No.III, Madurai and set aside the same as
illegal and entrust the custody of the jewels to the petitioner. !For Petitioner :
Mr.J.Sulthan Basha, For M/s.Ajmal Associates ^For Respondent No.1 :

Mrs.S.Prabha, Government Advocate(Crl. Side) For Respondent No.2 :
Mr.G.Muruggan For Respondent No.3 : Mr.S.Mohandoss For Respondent No.4 :
No Appearance ***** :

ORDER

***** The petitioner is arrayed as Accused No.2 in C.C.No.134 of 2008 pending on the file of the Court of Judicial Magistrate No.III, Madurai and originally, he along with Dinakaran, former Secretary, Mythili, former Cashier and Manikandan, former Jewel Valuer, were prosecuted for the commission of the offences under Sections 120(B), 408, 477(A) r/w 34 of Indian Penal Code and pendency of the trial, Accused No.4 has died and, therefore, he has been deleted from the array of the accused.

2. The petitioner is the former President of MD Special 188 Ramakrishnapuram Primary Agricultural Co-operative Bank, Ramakrishnapuram, Uthamapalayam Taluk, Theni District and as per the allegations levelled against him, he was the President of the Society between 1996 and 2001 and he is fully responsible for the affairs of the Society and so also, the jewels in the custody of the second respondent Society. It is further alleged that between 07.11.2000 and 31.03.2001, all the accused connived together and disbursed loans to 50 persons on the basis of pledging of fake gold jewels and that in respect of two jewel loan account numbers, though the amounts were paid and loans were discharged, the payment of the said amounts were not brought to the account and, thereby, a misappropriation of Rs.5,39,150/- (Rupees Five Lakhs and Thiry Nine Thousand and One Hundred and Fifty only) took place.

3. The petitioner/accused No.2 has filed Cr.M.P.No.6467 of 2012 under Section 451 of the Code of Criminal Procedure, praying for return of jewels contending, among other things, he himself pledged some jewels and without any authorisation, jewels along with the jewels pledged by other members of the Society were re-pledged with M/s.Muthoot Finance Corporation Private Limited, Bodinaickanur Branch and since it was done without the knowledge and consent, he is entitled to get the return of the jewels. The petitioner also gave an undertaking that he is ready and willing to repay the jewel loan amount due and

payable to the Society.

4. The second respondent Society has filed the counter opposing the said petition stating, among other things, the petitioner/ accused No.2 has also played his role in the commission of the offence and he has pledged 7 items ? 13 numbers of gold jewels and on a careful verification of list submitted before the Trial Court, it was found that the jewel loan No.407 of petitioner/Accused No.2 is not yet redeemed and there is also variance in the amount, as it has been mentioned as 'Rs.21,500/-' instead of 'Rs.16,500/-'. There are also other discrepancies noted.

5. The Trial Court, on a consideration of materials placed before it, has verified the jewel loan register and in page No.108, it was found that the petitioner herein availed jewel loans in jewel loan account Nos.407 and 408 on 31.08.2002 and in the said pages, there is an endorsement to the effect that he got back the return of the jewels, after verification. The Trial Court also held that with regard to the said endorsement, the petitioner has failed to offer any explanation and in the light of the same, the stand taken by the petitioner that he is the owner of item Nos.1 and 2 of the jewels pledged cannot be decided now, as it requires oral and documentary evidence. The Trial Court, citing the said reason, has dismissed the petition for return of jewels pledged by the petitioner herein, vide order dated 06.08.2013 and challenging the legality of the same, the present revision is filed.

6. The learned counsel appearing for the petitioner would contend that the petitioner himself is the victim of fraud and deceit played by other employees of the Co-operative Society and though he was at the helm of the affairs of the Society, he has no role to play the day-to-day affairs of the Society and since he has given a specific undertaking that he is ready and willing to settle the loan amount payable to the Society, the Trial Court ought to have ordered the return of at least two items of jewels sought for by him.

7. Per contra, the learned Government Advocate (Criminal side) has invited the attention of this Court to the counter-affidavit as well as the counter objections filed by the first respondent and would submit that two receipts were fraudulently retained and not surrendered by the accused, while he got back his jewellery on earlier occasion and now, he claims his jewellery for the second time without any

reason and, therefore, it was rightly observed by the Trial Court that the matter requires evidence and hence, prayed for dismissal of this petition.

8. The learned counsel appearing for the second respondent has invited the attention of this Court to the counter-affidavit and would submit that among the four receipts produced by the petitioner/Accused No.2, only two receipts were genuine and the remaining two were bogus and the said aspect has been rightly taken into consideration by the Trial Court and dismissed the petition and hence, prays for confirming the impugned order.

9. This Court, after hearing the rival submissions and upon perusal of the materials placed on record, is of the view that this revision is liable to be dismissed for the following reasons: (a) The Trial Court has observed, after verifying Page No.108 of jewel loan register, that there is an endorsement to the effect that the petitioner has got return back the jewels and once again, he has moved the Court for return of the jewels and he has failed to offer any plausible explanation as to the said entry made in the jewel loan register. (b) It is also pertinent to point out, at this juncture, it is the specific stand of the second respondent/Society, who was the custodian of the jewels, that the petitioner was in possession of 4 receipts and only two receipts were genuine and two receipts were bogus. (c) It is to be noted, at this juncture, the specific case of the prosecution is that the jewel loans were disbursed to 50 persons who pledged fake jewels and further allegation is that though two persons had discharged the loan, the said amount was not credited to the account, which has been misappropriated. Thus, there is a serious factual dispute to the said issue and the Trial Court has rightly observed that the said issue can be gone into only after full-fledged trial. (d) The relief sought for by the petitioner by way of interim custody of the jewels alleged to have been pledged by him and even after the conclusion of the trial, subject to the result of the case, cannot be gone into by the said Court, while exercising its power under Section 452 of Code of Criminal Procedure. This Court is of the view that there is no infirmity or error apparent in the reasons assigned by the Trial Court for dismissing the petition.

10. In the result, the revision is dismissed and the order dated 06.08.2013 made in Cr.M.P.No.6467 of 2012 in C.C.No.134 of 2008 on the file of the learned Judicial Magistrate No.III, Madurai, is confirmed. It is made clear that the observations made herein are only for the purpose of disposal of this revision and the Trial Court shall proceed with the trial and pronounce verdict based on the quality of evidence placed before it. 02.02.2015 Index:Yes/No Internet:Yes/No SML M.SATHYANARAYANAN, J.

SML To 1.The Judicial Magistrate No.III, Madurai. 2.The Inspector of Police, CCIW, Theni. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. Order made in CRL.R.C.(MD)No.733 of 2013 Dated:

02. 02.2015

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