

R.Badrinarayanan Vs. State,

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Court : Chennai

Decided On : Apr-01-2015

Judge : M.Sathyannarayanan

Appellant : R.Badrinarayanan

Respondent : State,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

01. 04.2015 CORAM THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN CRL.R.C.(MD)No.154 of 2015 R.Badrinarayanan : Petitioner Vs. State, rep. by the Inspector of Police, Vadipatti Police Station, Madurai District. (Crime No.133/2015) : Respondent Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records of the learned District Munsif -cum- Judicial Magistrate, Vadipatti, in Cr.M.P.No.2169 of 2015, dated 23.03.2015 and set aside the same and further, direct the learned District Munsif -cum- Judicial Magistrate, Vadipatti, to grant interim custody of the amount of Rs.23,50,000/- to the petitioner. For Petitioner : Mr.S.Mahendrapathy For Respondent : Mr.C.Ramesh, Additional Public Prosecutor :

ORDER

Mr.C.Ramesh, learned Additional Public Prosecutor, accepts notice for the respondent. By consent, the revision is taken up for final disposal.

2. The petitioner is the defacto complainant in Crime No.133 of 2015 registered by the respondent for the alleged commission of the offence under Section 394 of Indian Penal Code and the offence was said to have been committed on 15.03.2015. A perusal of the First Information Report would disclose that the petitioner/defacto complainant is carrying on business of Commission Agent with regard to the sale of beedi and cigarette and his car driver, namely Karuppiah is also engaged in collecting the amount from the customers of the petitioner/defacto complainant. On 14.03.2015, Karuppiah along with one Muthukrishnan were deputed to collect the amount from the customers and they have collected a sum of Rs.25,00,000/- and were returning and on the early morning hours on 15.03.2015, one of the tyres of the car got punctured and when it was replaced, two persons came, sprayed chilli power and took the money. Subsequently, the accused were arrested and major portion of the stolen money has also been recovered.

3. The petitioner/defacto complainant filed Cr.M.P.No.2169 of 2015, under Section 451 of the Code of Criminal Procedure, praying for interim custody of the cash belonging to him and seized from the accused, before the Court of District Munsif - cum- Judicial Magistrate, Vadipatti and the said petition was dismissed on 23.03.2015, stating that out of the stolen cash of Rs.25,00,000/-, a sum of Rs.23,50,000/- alone was recovered and still the balance amount of Rs.1,50,000/- is yet to be recovered and it was also observed that in the event of the cash being handed over, it may not be possible for recovering the balance amount also and citing the said reason, the petition came to be dismissed and challenging the legality of the same, the present revision is filed.

4. The learned counsel appearing for the revision petitioner would contend that it is not in serious dispute that the cash of Rs.23,50,000/- recovered from the accused belongs to the revision petitioner and since it is used for business purposes, the petitioner is in urgent requirement of the said money and there cannot be any impediment in ordering the return of the cash by way of interim custody subject to the conditions.

5. Per contra, the learned Additional Public Prosecutor, would contend that as rightly observed by the trial Court, out of the stolen amount of Rs.25,00,000/-, a sum of Rs.1,50,000/- is yet to be recovered and in the event of the cash being handed over, it may not be utilized by the petitioner/defacto complainant for his business purposes and it may create some difficulty at the time of trial of the case and hence prays for dismissal of this revision.

6. This Court, after considering the rival submissions and upon perusal of the typed-set of documents, is of the view that the prayer sought for by the petitioner is to be granted.

7. The Honourable Supreme Court of India, in the decision reported in 2002(10) SCC283(Sunderbhai Ambalal Desai v. State of Gujarat with C.M.Mudaliar vs. State of Gujarat), has considered the scope of Section 451 of the Code of Criminal Procedure, especially with regard to the return of valuable articles and currency notes and it is useful to extract the relevant portion, which reads thus: "Valuable articles and currency notes Valuable articles such as golden or silver ornaments or articles studded with precious stones, need not be kept in police custody for years till trial is over. The Magistrate should pass appropriate orders as contemplated under Section 451 Cr PC at the earliest. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after: (1) preparing detailed proper panchnama of such articles; (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and (3) after taking proper security. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr PC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 Cr PC to impose any other appropriate condition. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such

articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstance the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed."

8. As rightly pointed out by the learned counsel appearing for the petitioner, it is not in serious dispute that the stolen cash belongs to him and in the light of the above said pronouncement, there cannot be any difficulty in returning the said amount by way of interim custody.

9. In the result, the Criminal Revision Case is allowed and the impugned order dated 23.03.2015, made in Cr.M.P.No.2169 of 2015, on the file of the Court of District Munsif -cum- Judicial Magistrate, Vadipatti, is set aside and the cash of Rs.23,50,000/- (Rupees Twenty Three Lakhs and Fifty Thousand only) is ordered to be returned to the revision petitioner, subject to the following conditions: (i) A Mahazar/note has to be prepared containing the denomination and currency numbers by the respondent and it shall be submitted to the Court of District Munsif -cum- Judicial Magistrate, Vadipatti. (ii) The petitioner shall execute a personal bond for a sum of Rs.23,50,000/- (Rupees Twenty Three Lakhs and Fifty Thousand only) with one surety for the like sum to the satisfaction of the Court of District Munsif - cum- Judicial Magistrate, Vadipatti. (iii) On compliance of the above said conditions, a cash of Rs.23,50,000/- (Rupees Twenty Three Lakhs and Fifty Thousand only) is ordered to be returned to the revision petitioner/defacto complainant by way of interim custody. 01.04.2015 Index:Yes/No Internet:Yes/No SML To 1.The District Munsif -cum- Judicial Magistrate, Vadipatti. 2.The Inspector of Police, Vadipatti Police Station, Madurai District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN, J.

SML Order made in CRL.R.C.(MD)No.154 of 2015 Dated:

01. 04.2015

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