



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2015

CORAM

**THE HONOURBLE MR. JUSTICE M. SATHYANARAYANAN**

CrI.R.C.(MD).No.123 of 2015

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Ganesan

.. Revision petitioner/Petitioner/Accused No.2  
Vs.

State represented by  
The Inspector of Police,  
Cantonment Police Station,  
Tiruchirappalli,  
Tiruchirappalli District.  
(Crime No.743 of 2014)

.. Respondent/Respondent/Complainant

Criminal Revision Case is filed under Section 397(1) r/w 401 Cr.P.C. to call for the records in Cr.M.P.No.9615 of 2014 on the file of the learned Judicial Magistrate No.II, Tiruchirappalli, Tiruchirappalli District and set aside the order dated 17.11.2014 and direct the respondent herein to grant the interim custody of cash of Rs.5,44,560/- remanded in R.P.No.556 of 2014 dated 20.08.2014 which has been seized by the respondent herein in Crime No.743 of 2014.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : Mr.C.Ramesh  
Additional Public Prosecutor

ORDER

By consent, the revision is taken up for final disposal.

2. The petitioner is arrayed as accused No.2 in Crime No.743 of 2014 registered by the respondent police. There are totally 21 named accused and it is the case of the prosecution that accused Nos.11 to 31 were playing cards in hotel Gaja Priya, Trichy, which is prohibited under the provisions of Tamil Nadu Gaming Act and the seizer was effected on 17.08.2014 and a seizer of Rs.5,44,560/- being the money used for committing such an illegal act was also seized on 17.08.2014 by the respondent police. The petitioner on an earlier occasion filed CrI.M.P.No.8248 of 2014 under Section 451 Cr.P.C. praying for return of the cash of Rs.5,44,560/- and it was dismissed on 11.08.2014 by the Court of Judicial Magistrate No.II, Tiruchirappalli and once again the petitioner came forward to file CrI.M.P.No.9615 of 2014 praying for the very same relief contending among other things that the respondent police had illegally trespassed into the hotel premises, which is under the coverage of CCTV Cameras and the reading of the same also would disclose the said illegal act on the part of the respondent. It is further alleged that the cash alleged to have been used by the persons involved in gambling was the money seized from the cash box of the said hotel and the said amount has been utilised to falsely implicate the petitioner. It is further contended by the petitioner that the said money was used by him for managing day-to-day affairs including the administrative expenditure. Since the money was seized, his business is affected. The petitioner had also examined two witnesses to substantiate



his contention that the barging of the premises on the part of the police party was per-se illegal.

3. The Court of Judicial Magistrate No.II, on taking into consideration of the averments made in the petition and the objections filed by the prosecution and by placing reliance upon the decisions of the Hon'ble Supreme Court in 2006 Cr.L.J. 259(261) (*STATE OF KARNATAKA v. K.KRISHNA GOWDA*) and 2003 Cr.L.J. 3665 (3667) (*INSPECTOR-IN-CHARGE, RAILWAY PROTECTION FORCE v. STATE OF WEST BENGAL*), has held that the photographs and account statements produced by the petitioner during the course of enquiry cannot be accepted without trial and also taken into consideration of the fact that on account of the pendency of the quash petition before this Court, it is unable to order speedy trial and dismissed the petition vide impugned order dated 17.11.2014 and challenging the legality of the same, the present revision is filed.

4. Mr.A.Thiruvadi Kumar, learned counsel for the revision petitioner has drawn the attention of this Court to the typed set of documents and would submit that by examining P.Ws.1 and 2, the petitioner was able to substantiate the fact that the respondent police without getting the warrant from the jurisdictional Magistrate has barged into the premises and seized the cash of Rs.5,44,560/- from the cash box and the said money was intended for meeting out the day-to-day administrative expenditure and the said money was used as if it was earned by the accused in gambling in the hotel premises and the petitioner prays for return of the said amount by way of interim custody and he is also willing to give sufficient surety including the immovable property security and hence, there cannot be any impediment in ordering this petition and hence, prayed for setting the impugned order. He has also placed reliance upon the Judgment of the Hon'ble Supreme Court reported in 2003 SCC (Cri) 1943 (*SUNDERBHAI AMBALAL DESAI v. STATE OF GUJARAT*) in support of his contention.

5. Per contra, Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the respondent police has strongly opposed this petition by submitting that the prosecution has to mark the currency notes, which have been used for the purpose of gambling and the said currency notes have to be exhibited as material objects and in return of the same, the case of the prosecution is bound to suffer and hence, prays for dismissal of this revision.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. The Hon'ble Supreme Court in the above cited Judgements have framed certain guidelines for return of valuable articles and currency notes, vehicles, liquor/Narcotic drugs by way of interim custody under Section 451 Cr.P.C. and it is relevant to extract the following paragraphs:-

"10. To avert such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the

earliest  
Valuable articles and currency notes

11. With regard to valuable articles, such as, golden or



silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

12. 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.

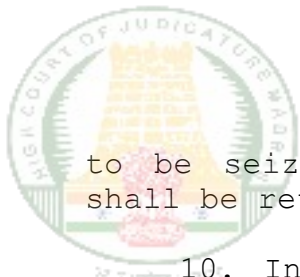
13. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles 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.P.C. to impose any other appropriate condition.

14. 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 circumstances, the investigating officer should keep such articles in custody for a longer period for the purpose of investigation and identification. For currency notes, similar procedure can be followed."

The said judgment was also considered and followed by this Court in 2009 (1) MLJ CrL. 852.

8. The Hon'ble Supreme Court in the above cited decision, has given the procedure for handing over the valuable articles and currency notes and in paragraph No.14, it has been observed that for return of currency notes, similar procedure, as contemplated in paragraph No.12, can be followed.

9. This Court taken into consideration of the above facts and circumstances and also taken into consideration of the fact that the petitioner is running business under the name and style of Hotel Gaja Priya at Trichy, is of the view that the cash of Rs.5,44,560/- alleged



to be seized while committing the offence of gambling on 17.08.2014 shall be returned.

10. In the result, the Criminal Revision Case is allowed and the cash of Rs.5,44,560/- deposited in the custody of the Court of Judicial Magistrate No.II, Tiruchirappalli in Crime No.743 of 2014 is ordered to be returned subject to the following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.6 lakhs with one surety for the like sum to the satisfaction of the learned Judicial Magistrate No.II, Tiruchirappalli;

(ii) The petitioner shall offer an immovable property security to the satisfaction of the said Court to the value of Rs.6 lakhs;

(iii) On compliance of conditions 1 and 2, the Court of Judicial Magistrate No.II, Tiruchirappalli shall return the cash of Rs.5,44,560/- to the petitioner by way of interim custody, after noting down the denomination of currency notes and serial numbers in terms of the seizure mahazer.

Sd/-

Assistant Registrar(Writs)

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Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,  
Tiruchirappalli,Tiruchirappalli District.

2.Do-Thro'The Chief Judicial Magistrate,  
Trichy.

3.The Inspector of Police,  
Cantonment Police Station,  
Tiruchirappalli,  
Tiruchirappalli District.

4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.A.Thiruvadi Kumar, Advocate, SR.No.16092

Cr1.R.C. (MD) .No.123 of 2015  
31.03.2015

rj2

PA/23.04.2015/4P/6C