

R. Badrinarayanan Vs State

Court: Madras High Court (Madurai Bench)

Date of Decision: April 1, 2015

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 451
Penal Code, 1860 (IPC) - Section 394

Hon'ble Judges: M. Sathyanarayanan, J

Bench: Single Bench

Advocate: S. Mahendrapathy, for the Appellant; C. Ramesh, APP, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Sathyanarayanan, J.

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 de facto 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/de facto 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/de facto 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/de facto 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/de facto 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 Hon"ble Supreme Court of India, in the decision reported in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, AIR

2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 , 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.P.C. 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.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.

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/de facto complainant by way of interim custody.