

(2017) 12 KAR CK 0033
In the Karnataka High Court
Case No : 8015 of 2016

Muthoot Finance Ltd., Vs Smt. Mamatha? W/o Venkatramaiah @ Raju,

Date of Decision : 11-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 102](#), [Section 451](#), [Section 457](#)/
[Section 41\(d\)](#) - Power of police officer to seize certain
property — Order for

Citation : (2017) 12 KAR CK 0033

Hon'ble Judges : K.N.Phanendra

Bench : SINGLE BENCH

Advocate : Dr. Amit Deshpande, Hanumanthappa B. Haravi Gowdar, Sandesh J. Chouta

Final Decision : Dismissed

Judgement

1. Office objections are over-ruled.

Heard the learned counsel for the petitioners in the above said two petitions and learned SPP-II for the respondent-State. Perused the records.

2. It is an undisputed fact that respondent No.2

police in Criminal Petition No.8015/2016 have registered a case on the complaint lodged by one

Smt.Mamatha on 20.9.2014 in Crime No.266/2014 for the offence under Section 379 of IPC against one Raju

who alleged to have committed theft of some gold

articles from Nano Car on 18.9.2014. Subsequent to the

complaint lodged, the police on information about the

said theft from the statement of one Sri.H.C.Jagannathrao, the Head Constable of Jayanagar police who caught hold the person by name Raju in connection with some other case and the said Raju disclosed about the case which the police have subsequently registered in Crime No.300/2014 under Section 41(d) and 102 of Cr.P.C. r/w Section 379 of IPC. In connection with this case, the police have recovered certain gold articles on the information of the said accused Raju, from the petitioner in Criminal Petition No.8015/2016 i.e. Muthoot Finance Limited.

3. Both the petitioners in the above petitions i.e. Muthoot Finance Limited as well as Smt.Mamatha have filed applications under Sections 451 and 457 of Cr.P.C. for release of the said articles to their custody. During the pendency of the proceeding, the Trial Court has rejected the applications vide order dated 28.11.2014 stating that the material placed before the Court are not sufficient at this stage to establish the ownership of the said article by Smt.Mamatha. Further it is shown in the records that at the instance of the accused some jewels were seized from the Muthoot Finance Limited.

Therefore, the facts are hazy with regard to the ownership and possession of the said articles by the competent persons to release the same in favour of any one of them. Being aggrieved of the said orders, both the petitioners have filed Criminal Revision Petition in Crl.R.P. No.681/2014 and Crl.R.P.No.447/2015. The 56th Additional City Civil and Sessions Judge, Bengaluru, after hearing both the parties passed a

detailed order rejecting the said revision petitions and on facts the Court has given a finding that the said Smt.Mamatha has not established the ownership over the said articles at that particular stage. Further, there is a doubt with regard to return of the articles to any of the persons at the initial stage. Therefore, the Court has rejected their revision petitions.

4. On careful perusal of the entire materials on record both the Courts have expressed their views with regard to a statement given by Smt.Mamatha at the initial stage and subsequent statement made by her and also with regard to the receipts produced by her before the Court and expressed its doubt with regard to the earlier possession and ownership over those articles seized in this case. Perhaps both the Courts must have felt that the ownership and possession of the golden articles earlier to the theft has to be established by Smt.Mamatha during the course of full fledged trial. Therefore, for that reason, the Trial Court has dismissed the applications.

5. The learned counsel for the petitioner Muthoot Finance Limited has submitted that when there is doubtful circumstance with regard to the ownership, the Court need not give any finding on the ownership of the articles, it simply return the same to the person from whom the said articles were recovered. However, it is clear from the case that on the information of the accused Raju and his instance jewels were recovered. Further, added to that, there is some discrepancy with regard to the explanation by said Smt.Mamatha as to

how many of the articles were the subject matter of theft, because both the Courts have compared the statement given by Muthoot Finance Ltd. and the receipts produced and subsequent statement of Smt.Mamatha. Therefore, the Court felt some doubt to release the said articles in favour of either of the parties.

6. When both the Courts have relied upon certain factual aspects and rejected the application, this Court cannot reverse the same and grant relief to any one of the party. No prejudice or injustice would be caused to any of the parties, if those articles are ordered to be kept in the safe custody of the Trial Court. After recording evidence, the Court has to give a finding with regard to who is entitled for the custody of those articles. Hence, I pass the following ORDER

7. Both the Criminal Petitions are hereby dismissed. However, the Trial Court is hereby directed to take care of those articles which are seized and keep them in safe custody till disposal of the case and after recording of the evidence the Court has to give a finding after hearing the rival claimants with regard to who is entitled for return of those articles and thereafter pass appropriate orders in accordance with law.