

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.07.2015

DELIVERED ON : 15.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.10468 of 2015

Muthu Raman

Petitioner/Petitioner

Vs

State by:-

The Inspector of Police
K-7, I.C.F. Police Station
Chennai
(Crime No.327 of 2013)

Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 31.03.2015 in Crl.M.P. No.530 of 2015 rendered by V Metropolitan Magistrate, Egmore, Chennai, direct the lower court to return the RC Book and permit the petitioner to dispose of Tavera Maxi Cab bearing No.TN.01-AJ 5028.

For petitioner Mr. M. Nirmal Kumar
For respondent Mr. C. Emalias
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order dated 31.03.2015 in Crl.M.P. No.530 of 2015 rendered by the V Metropolitan Magistrate, Egmore, Chennai.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. The petitioner is the owner of Tavera car bearing Registration No. TN-01-AG-5028 which he had entrusted to M/s Veeyes Travels for hire. It appears that the said car was rented out on contract by Veeyes Travels to the Central Industrial Security Force for the use of their officers in the Ennore Port Trust. The said car was being driven by one Rajan and on 11.05.2013, his brother-in-law, one Manavalan is said to have taken the vehicle along with a gang to attack one Adalarasu. The gang attacked Adalarasu on 11.05.2013 at about 11.45 p.m., but, he survived the attack. Therefore, a case in Cr.No.327 of 2013 was registered by the respondent for offences under Sections 341, 324, 294 (b), 307 and 506(ii) IPC. The car was seized by the police near a Railway track in Perambur and it has been made as a subject matter of the property in Cr.No.327 of 2013. On coming to know of this, the petitioner filed an application under Section 451 Cr.P.C. in Crl.M.P. No.994 of 2013 for return of the said car and the learned V Metropolitan Magistrate, by order dated 18.06.2013, gave interim custody of the car to the petitioner on the following conditions:

"a The petitioner shall execute a bond for a sum of Rs.4,00,000/- (Rupees Four Lakhs only) along with one surety for a like sum.

b The petitioner shall take photograph of the properties which should be signed by both the petitioner and the investigation officer and produce the photograph and negative before this court.

c Further detailed punchanama incorporating all the details of the properties should be prepared and signed by both the investigation officer and the petitioner.

d The petitioner shall not sell, change, alter or otherwise dispose of the properties till the disposal of the main case.

e The petitioner shall produce the property before this court as and when directed by this court.

f The original R.C. book shall be retained in this court."

4. The investigation in this case is still under progress and no final report has been filed. Now, it is the contention of the petitioner that he is around 80 years old and maintaining the car is a serious liability for him, as he has no income to maintain himself and that apart, since the make of the car is of the year 2009, it is frequently developing repairs. Therefore, the petitioner filed an application in Crl.M.P.No.530 of 2015 before the learned V Metropolitan Magistrate, Egmore, for permission to return the RC Book and permit him to dispose of the car, which was dismissed by the learned Magistrate on 31.03.2015, aggrieved by which the petitioner is before this Court.

5. The learned Additional Public Prosecutor submitted that the case is still under progress and therefore, it may not be desirable to return the car.

6. Admittedly, the petitioner is the owner of the car and he is not in any way involved in the offence. The car was taken away by the driver's relative and was used for the commission of offence, over which this petitioner had no control. Based on the confession statement of the arrested accused, Section 27 recovery of the car was effected.

7. In the considered opinion of this Court, it is not necessary to mark the car as a material object. It would be sufficient if the Police Officer gives evidence about the disclosure made by the accused and the fact discovered by him pursuant to the disclosure, namely, seizure of the car. The Investigating Officer can mark the seizure memo and mahazar attested by the independent witnesses for proving the factum of seizure of the car. It is sufficient to mark the photograph of the car and state in the witness box that the car has been returned to Muthuraman, the owner of the car, pursuant to the order passed by this Court in this Criminal Original Petition. After the return of the property to the claimant, the Police can record a further statement under Section 161 about the handing over the property pursuant to Court order. If the recipient of the property is available at the time of trial, he can be examined as a witness to prove the factum of having received the property pursuant to Court order and he can also speak about its disposal. A copy of the order passed in this petition can also be marked as proof of the fact that such an order has been passed. Courts must evolve pragmatic procedures for mitigating the sufferings of

common citizens and should not live in stone age. After all the trial in this case may take years and to expect the owner to preserve the vehicle till then would amount to travesty of justice. In Special enactments like Tamil Nadu Prohibition Act, a separate procedure for confiscation of vehicles etc is given. In such cases the trial Court should be circumspect while passing return of property order. The following paragraph from the judgment of the Supreme Court in Himmat Sukhadeo Wahurwagh and others v. State of Maharashtra [(2009) 6 SCC 712] is worth quoting:

"25. The Commission also quoted with approval from a letter of a senior Sessions Judge in which he wrote that:

"A prisoner suffers for some act or omission but a witness suffers for no fault of his own. All his troubles arise because he is unfortunate enough to be on the spot when the crime is being committed and at the same time "foolish" enough to remain there till the arrival of the police. It is for these reasons that people do not take the victim of a road accident to hospital or come to the help of a lady whose purse or gold chain is being snatched in front of her eyes. If some person offers help in such cases he is to appear as a witness in a court and has to suffer not only indignities and inconveniences but also has to spend time and money for doing so. Some time the witnesses incur the wrath of hardened criminals and are deprived of their lives or limbs."

Supposing an offence had taken place in a train, will the train be marked as a material object? Today a victim of crime is a sufferer than the accused in the legal system and we should ameliorate his sufferings substantially.

8. In the result, this petition is allowed and the order dated 31.03.2015 passed in Crl.M.P. No.530 of 2015 by the V Metropolitan Magistrate, Egmore, Chennai. is set aside. The learned V Metropolitan Magistrate is directed to hand over the original RC Book and other papers of the car to the petitioner, after retaining the certified photo copy of the documents on the file of the Court. The learned Magistrate shall himself compare the original papers with the photo copy and certify the photo copies. The certified photo copies, along with memorandum of the Magistrate returning the RC Book and other papers to the petitioner, may be sent along with committal papers to the Sessions Court. The petitioner is permitted to dispose of the car TN 01 AJ 5028. The Police is directed to record 161 Cr.P.C. statement of the petitioner about the return of property and file the statement with the Final Report.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The V Metropolitan Magistrate
Egmore, Chennai.

2.-do- Through The Chief Metropolitan Magistrate,
Egmore, Madras-8.

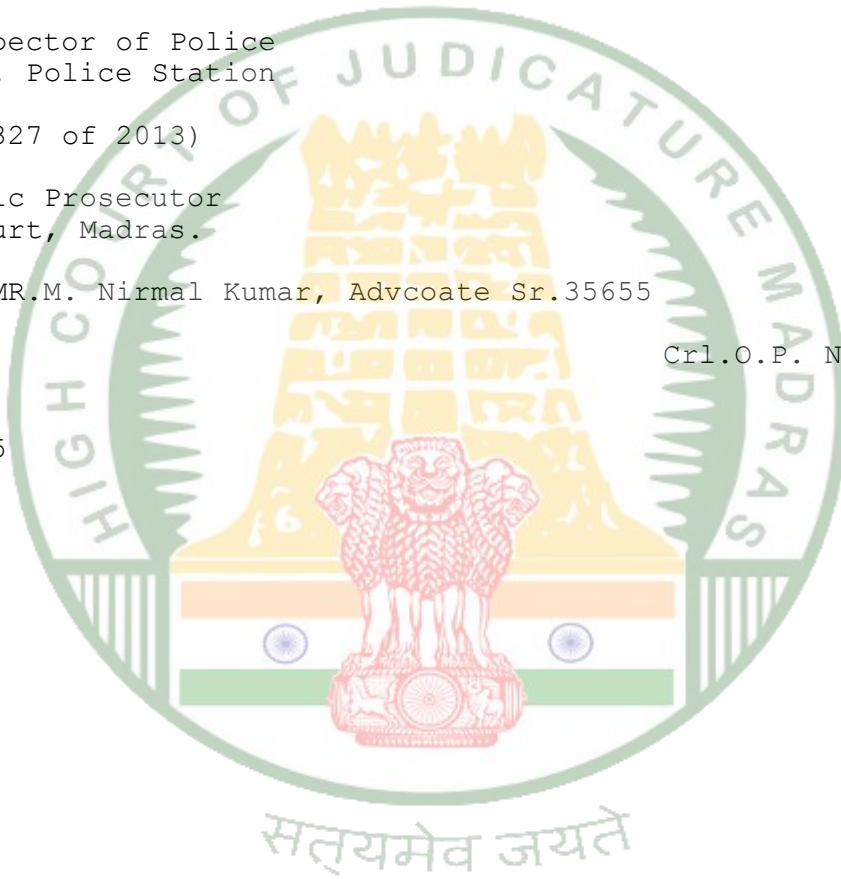
3. The Inspector of Police
K-7, I.C.F. Police Station
Chennai
(Crime No.327 of 2013)

4.The Public Prosecutor
High Court, Madras.

+ 1 cc to MR.M. Nirmal Kumar, Advcoate Sr.35655

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VGI(CO)
EU 29.07.15



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