

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

Coram:

THE HONOURABLE MR.JUSTICE S. MANIKUMAR

CRL.RC.No.158 of 2015

V.Muralidharan

.. Petitioner

-Vs-

The State

Rep. by its Inspector of Police,
R-1, Mambalam Police Station (Crime),
Chennai.

(Crime No.9 of 2015)

.. Respondent (Complainant)

PRAYER: Revision filed under Section 397 and 401 Cr.P.C., to set aside the order passed in Crl.M.P.No.98 of 2014 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai dated 16.02.2015.

For Petitioner : Mr.S.Sugendran
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

The petitioner has come forward to set aside the order passed in CMP No.98 of 2015 in Crime No.9 of 2015 dated 16.02.2015 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

2.Learned counsel for the petitioner submitted that the petitioner is the power of attorney of the owner of the vehicle, viz., Toyota Etios bearing Registration No.TN-03 L 4036. The said vehicle was seized by the respondent police for commission of offences under Sections 406 and 420 IPC by the accused in the case (Crime No.9 of 2015). It is contended that the owner of the vehicle, viz., K.Sarumathi, wife of Ramnath has nothing to do with the alleged offences and that the accused alone has used the said vehicle for the illegal purpose without the knowledge of the petitioner. He further submitted that in view of the seizure, the vehicle is exposed to sun and rain and that the condition of the vehicle would be deteriorating day by day. Learned counsel further submitted that the petitioner would be put to great hardship and irreparable loss if interim custody is not given to him.

3.Learned Public Prosecutor submitted that the petitioner is not an accused in the case and that he is only the power of attorney of

the owner of the vehicle, viz., Toyota Etios bearing Registration No.TN-03 L 4036, which has been used by the accused.

4.This Court considered the rival submissions made on either side and also perused the materials available on record.

5.The fact remains that Ms.Sarumathi is the owner of the vehicle, viz., Toyota Etios bearing Registration No.TN-03 L 4036 and the said vehicle is involved in the case registered under Sections 406 and 420 of IPC. It is stated that the petitioner is not an accused in this case. Before the Court below, Ms.Sarumathi has filed an affidavit giving 'No objection' for interim custody of the vehicle to be given to the petitioner. In such circumstances, interim custody of the vehicle to the petitioner, cannot be denied. The Hon'ble Apex Court in Sunderbhai Ambalal Desai case reported in 2003 SCC (Cri) 1943, held as follows:

"The powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1.owner of the article would not suffer because of its remaining unused or by its misappropriation;

2.court or the police would not be required to keep the article in safe custody;

3.if the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4.this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

Basavva Kom Dyamangouda Patil v. State of Mysore, (1977) 4 SCC 358 : 1977 SCC (Cri) 598, relied on Vehicles

"It is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles".

In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by

the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

However these powers are to be exercised by the Magistrate concerned. The Magistrate concerned would take immediate action for seeing that powers under Section 451 Cr.P.C are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly".

6. In *Sunderbhai Ambalal Desai* case reported in 2003 SCC (Cri) 1440, the Apex Court further held that :

"Further, with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the court and the seizure report may be sufficient".

7. As rightly contended, vehicle in the custody of the respondent police and exposed to sun and rain would be deteriorated day-by-day and in such event, the petitioner would be put in to great hardship and irreparable loss. In the light of the judgment and for the reasons stated supra, this Court is constrained to set aside the impugned order of the learned XVII Metropolitan Magistrate, Saidapet, Chennai, made in CMP.No.98 of 2015 dated 16.02.2015. This Court is also of the considered view that no prejudice would be caused to the prosecution in the event of granting the relief of interim custody of the vehicle to the petitioner on fulfilling the following conditions:

(i) The petitioner shall establish the ownership of the vehicle by producing necessary original certificates before the respondent police and as well as before the learned Magistrate and the learned Magistrate on verification, shall retain the original documents, if necessary.

(ii) The petitioner shall not alienate the vehicle in any manner till adjudication is over.

(iii)The petitioner shall execute a personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) to the satisfaction of the learned XVII Metropolitan Magistrate, Saidapet, Chennai;

(iv)The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent.

8. The Criminal Revision Case is allowed, accordingly.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The XVII Metropolitan Magistrate, Saidapet, Chennai.

2. The Inspector of Police, R-1, Mambalam Police Station (Crime), Chennai.

3. The Public Prosecutor, High Court of Madras, Chennai.

1 cc to Mr.S.Sugendran ,Advocate, SR.No.11393

CRL.R.C.No.158 of 2015

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