

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

C O R A M

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Criminal Revision Case No.1406 of 2016

M.Mahadeva

... Petitioner

Vs

State rep. By
Sub-Inspector of Police,
Thali Police Station,
Krishnagiri District

... Respondent

Prayer: Revision filed under Section 397 and 401 of the Code of Criminal Procedure to set aside the order passed in Crl.M.P.No.2752 of 2016 dated 26.10.2016 on the file of Judicial Magistrate Court, Denkanikkottai and to direct the court below to return the property in Crime No.175 of 2016 on the file of the Respondent.

For Petitioner : No appearance

For Respondent : Ms.M.F.Shabana
Government Advocate (Crl.Side)

O R D E R

The Petitioner has preferred the instant Criminal Revision Petition before this Court as against the Impugned Order dated 26.10.2016 in Crl.M.P.No.2752 of 2016 passed by the Learned Judicial Magistrate, Thenkanikottai, Krishnagiri District.

2. Although, on behalf of the Petitioner, his Advocates have filed vakalat and their name printed in the cause list, yet, they have not appeared before this Court. However, this Court is perforced to look into the relevant papers of Criminal Revision Case No.1406 of 2016 and proceeds to pass the order in the case on merits.

3. The Learned Judicial Magistrate, Thenkanikottai, Krishnagiri District while passing the Impugned order on 26.10.2016 in Crl.M.P.No.2752 of 2016 in Crime No.175 of 2016 at Paragraph No.4 had among other things observed that ".....investigation of the present case was not completed, only during the course of investigation / at the time of investigation, it would come to light as to how the accused had

utilised the vehicle and since the investigation in the present case was not completed and if the case property was handed over to the owner, then, there are possibilities to change the character of the vehicle and in this regard serious objection was raised on behalf of the prosecution side and resultantly dismissed the petition on the basis that the Petition could not be allowed".

4. Challenging the correctness, and validity of the order dated 26.10.2016 in CrI.M.P.No.2752 of 2016 passed by the trial court, the Revision Petitioner / Owner of the vehicle has focused the present Criminal Revision Petition before this Court, mainly by taking a plea in the 'Grounds of Revision Petition' that the Accused and the Petitioner are relatives and on that basis the Accused took the car, utilised the same for few months for his business, but unfortunately the Respondent / Complainant had arrested the Accused in respect of offence under Section 399 of Indian Penal Code.

5. It is also the stand of the Revision Petitioner that on the same day, the Respondent / Police seized the TATA SAFARI car bearing Registration No.KA-05-ME-8780 and produced the same before the trial court as case property.

6. The main grievance of the Revision Petitioner (as seen from Ground No.7 of Revision Petition) is that he had already bearing a mental agony because of the reason that his vehicle was in the custody of the Respondent / Complainant for the last 130 days and further because of the dismissal of the CrI.M.P.No.2752 of 2016 by the trial court on 26.10.2016, much hardship is caused to him.

7. At this stage, this Court has perused the xerox copy of First Information Report filed in the typed set of papers to the Revision Petition and finds that the date of occurrence was on 27.06.2016 at 4.30 hrs. The Complainant / Informant is one Lakshmanan. The suspected accused are (i). Ethu (Ethupoosana Reddy, (31), (ii) Babu (Rakesh) (24), (iii) Jagan (Jakkappan) (26) (iv) Sathish (26) (v) Ashok (24).

8. Even though the date of occurrence was on 27.06.2016, the 'Petition for Return of Property' in CrI.M.P.No.2752 of 2016 was filed on 18.10.2016. But the trial court had passed the Impugned Order in CrI.M.P.No.2752 of 2016 dismissing the 'Petition for Return of Vehicle / Property, as the case may be. Before the trial court, it appears that the Revision Petitioner / Petitioner had enclosed the Registration copy of the Vehicle issued by the Transport Department. The vehicle was seized by the Respondent / Police in Crime No.175 of 2016 (C.P.197 of 2016) and in fact, it is the case of the Revision

Petitioner before the trial court that he is ready to abide the conditions to be imposed by the court, if it hands over the vehicle to him.

9. It is to be noted that the Respondent / Police on suspicion had stopped vehicle, TATA SAFARI bearing registration no. KA-05-ME-8780 when they had a inkling of doubt that they were travelling for the purpose of committing Dacoity and while intercepting the vehicle, police found 1. Veecharuval 2. Koduval (sickle) 3. Knife and therefore, they were arrested and also, the vehicle was seized. No doubt, it is the case of the Respondent / Police / Complainant that the investigation in the present case is not yet completed. According to the Respondent / Police the FIR was registered against the five accused under Section 399 of Indian Penal Code (making preparation to commit Dacoity).

10. In this connection, this Court aptly points out that the power envisaged under Section 451 of Cr.P.C., is to be exercised by a Court of Law in a judicious and expeditious fashion bearing in mind (i) The owner of vehicle / article ought not to suffer because of its non-user or by its misappropriation. (ii) Either the Court or the Respondent Police would not be required to keep the said Vehicle / Article in safe custody. 3. If an appropriate Panchanama / Zimanana before handing over the possession of the vehicle is prepared that can be made use of by the trial court instead of production of the vehicle during the trial.

11. Added further, if need be, or situation so warrants, an evidence may also be recorded by the trial court describing the character of the property in a qualitative and quantitative term. Undoubtedly the trial court can pass an order under Section 451 of Cr.P.C., only after physical or symbolical production of seized vehicle is before Court in this regard it is to hear both sides.

12. A registered owner of the vehicle is the competent / appropriate person to have the custody of the vehicle in question. Also it is open to the trial court to impose necessary or other suitable condition, as the case may be, when it orders for return / release of the vehicle. It is true that the TATA SAFARI vehicle in question is a material evidence for the Respondent / Complainant in regard to the commission of offence by five accused, but, however, in the considered opinion of this Court that would not preclude a Court of Law / trial court concerned to consider the plea made by the Petitioner / Owner of vehicle for return of his vehicle and while ordering the return of vehicle to the Revision Petitioner / Owner, the trial court shall bear in mind in a primordial fashion that it can safeguard everybody's interest imposing necessary conditions.

13. At the same time, it cannot be forgotten if the vehicle, namely, TATA SAFARI bearing Registration No.KA-05-ME-8780 is kept unused or either it is lying in police station or in Court complex for long number of months, then, the said vehicle would get rust and by that time, the trial of the main case is over, totally the vehicle seized by the Respondent/ Police would be of no utility value to the Petitioner / Owner of the vehicle.

14. It is to be pointed out that a property which was produced in Court and directed to be kept in custody of the Complainant/Police becomes 'Custodia Legis' . Furthermore, the Petitioner being a registered owner of the vehicle there may not be any hindrance / objection to handover the vehicle to him, of course based on necessary conditions being imposed thereto. However, if it is apprehended that the vehicle in question would be used for similar offence, necessary conditions can always be imposed by the trial court without allowing the vehicle to be kept either in police station or in Court, which is likely to be reduced to a scrap in the near future. Besides this, if the disuse of vehicle would cause further damage then, the vehicle can be released to the owner after imposing necessary conditions by even obtaining an 'Indemnity bond' from the owner / registered owner of the vehicle.

15. It is an axiomatic fact that the vehicle seized can be released / returned for temporary custody under Section 451 of Cr.P.C., from the person from whom it was seized by the police or to the owner. A person, who is lawful owner with necessary proof is always entitled to claim the 'Return of the Vehicle' during the pendency of the case. The crucial aspect one is to keep in mind is that the vehicle viz., TATA SAFARI bearing Registration No. KA-05-ME-8780, ought not to be allowed to become a junk and to get rusted in the normal course. Even a photograph(s) of the vehicle (with Registration and Chasis Nos.) can be taken by the Court concerned with due attestations or countersigned by the complainant, accused and also by the person to whom custody is to be given. An undertaking can also be taken from the Petitioner / Owner of the vehicle not to transfer the ownership of vehicle, not to release it to anyone and more importantly, not to allow or effect any changes with a view to make it an unidentifiable one. Unfortunately, the trial court had not borne in mind the decision of the Hon'ble Supreme Court Sunderbhai Ambalal Desai V. State of Gujarat reported in AIR 2003 Supreme Court at Page 638 and the dictum laid thereon, which in the considered opinion of this Court had resulted in miscarriage of justice. Viewed in that perspective, this Court interferes with the Impugned Order dated 26.10.2016 passed by the trial court in Crl.M.P.No.2752 of 2016 in Crime No.175 of 2016 and sets aside the same. Consequently, the Criminal Revision Petition succeeds.

16. In fine, the Criminal Revision Petition is allowed. The Impugned Order dated 26.10.2016 in Crime No. 175 of 2016 on the file of the Learned Judicial Magistrate, Denkanikottai is set aside by this Court for the reasons assigned in this Criminal Revision Petition. The matter is remitted back to the trial court for fresh determination of CrI.M.P.No.2752 of 2016 and in this regard, the trial court is directed to provide necessary opportunity to the Petitioner as well as to the Complainant / Respondent to raise all factual and legal pleas. It is needless for this Court to make a significant mention that the trial court is to pass a fresh, reasoned speaking order with an open, clear cut and unbiased mind, in a practical, pragmatic and rational manner, bearing in mind the well laid principle of the Supreme Court in regard to the disposal of the Miscellaneous Petition (in Cr.M.P.No.2752/ 2016 of course, after restoring the same to file) filed under Section 451 of Cr.P.C. In any event, the trial Court is to pass fresh orders in CrI.M.P.2752 of 2016 in accordance with Law and in the manner known to Law, within a period of two weeks from the date of receipt of a copy of this order. It is open to the trial court to impose any further/other necessary condition(s) which it deems fit and proper, on the facts and circumstances of the present case, which float on the surface.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Judicial Magistrate,
Denkanikottai.
2. The Sub-Inspector of Police,
Thali Police Station,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Malathi, Advocate, S.R.No.67608

Criminal Revision Case No.1406 of 2016

NRI (CO)
CA(16/12/2016)