

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.409 of 2016

Suvitha
W/o.Yuvaraj

.. Petitioner

Vs.

State by
Additional Deputy Superintendent of Police,
CBCID, Namakkal.

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the order of learned Chief Judicial Magistrate, Namakkal, passed in C.M.P.No.1536 of 2015 dated 20.01.2016 and consequently, seeks a direction to the respondent to return the property viz., LMW, Vehicle Car TATA Safari VXEIII Dicol, bearing Registration No.TN-41-S-1564, Engine No. 2.2LDICOR006ARZJ03035 and Chassis No.403093BRZN02974 Model of year February 2008 to the petitioner.

For Petitioner : Mr.M.Elango

For Respondent : Mr.K.Madhan

Government Advocate [Crl.side]

O R D E R

Petitioner challenges the order of learned Chief Judicial Magistrate, Namakkal, passed in C.M.P.No.1536 of 2015 on 20.01.2016, rejecting the petition filed for return of vehicle.

2. Respondent has seized a LMW, Vehicle Car TATA Safari VXEIII Dicol, bearing Registration No.TN-41-S-1564 belonging to the petitioner in connection with the case registered in Crime No.2 of 2015 on its file for offences under Sections 363, 302, 212 and 216 IPC r/w 3(2)(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities Act), 1989. Petitioner has moved C.M.P.No.1536 of 2015 before learned Chief Judicial Magistrate, Namakkal, seeking return of the vehicle. Such petition came to be dismissed under orders of the Court below dated 20.01.2016 in crime no 2/2015 and hence, this revision.

3. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

4. Learned counsel for petitioner submits that the prosecution case is of the vehicle viz., LMW, Vehicle Car TATA Safari saloon bearing Registration No.TN-41-S-1564, Engine No.2.2LDICOR006ARZJ03035 and Chassis No.403093BRZN02974, belonging to the petitioner, who is the wife of the first accused, having been used for commission of offences in case registered in Crime No.2 of 2015 on the file of respondent police. Learned counsel submits that the vehicle answers the description of property in Section 451(b) Cr.P.C. Learned counsel refers to judgment of Supreme Court in Padma Sundara Rao (dead) and others v. State of Tamil Nadu and others [2002 (3) SCC 533] to submit that while interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. The legislative casus omissus cannot be supplied by judicial interpretative process. Learned counsel submits that where Section 451 Cr.P.C. requires a Court to pass an order for interim custody of property pending disposal of a case, the Court below is bound to pass orders in favour of the person entitled thereto. Petitioner, as owner, is entitled to possession of the vehicle pending disposal of the case. Learned counsel refers to judgment of Apex Court in Sunderbhai Ambalal Desai v. State of Gujarat [2002 (10) SCC 283] to contend that such decision of the Apex Court requires the Magistrate to 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. सत्यमेव जयते

5. Heard learned Government Advocate [Crl.side] on the above submissions.

6. Learned Government Advocate [Crl.side] submits that the husband of petitioner/A1 in the case is involved in as many as nine cases, the details whereof are as follows:

Police Station	Crime No.	Offences
Sankari Police Station	106 of 2015	294(b), 324 and 506(ii) IPC

Police Station	Crime No.	Offences
Karur Town Police Station	120 of 2015	427, 294(b) and 506(i) IPC
Perundurai Police Station	303 of 2013	342, 364-A and 365 IPC
Perundurai Police Station	645 of 2013	147, 343, 387 and 364-A IPC
Tiruchengode Town Police Station	318 of 2015	505 (ii) IPC r/w 3(2)(x) SC/ST Act
Erode Economic Offences Wing-II	17 of 2012	120(b), 420 IPC and 5 of TNPID Act
Kumarapalayam Police Station	390 of 2014	143, 341, 188 IPC r/w 7 (1) a CLA Act, 1932
Kumarapalayam Police Station	400 of 2014	143, 379 (NH) IPC, 4 of TNPPDL Act
Vellode Police Station	87 of 2013	367 and 387 IPC

The present is a case of offence u/s.302 IPC.

7. In dismissing the petition seeking return of vehicle, the Court below has reasoned that the case exclusively is triable by a sessions Court and since the vehicle was used in the commission of offence, it has to be marked as a material object. It has further reasoned that there is likelihood of altering the nature and character of the vehicle and hence, directing return of vehicle would certainly prejudice the prosecution case.

8. While this Court finds no error in the reasoning of the Court below in dismissing the petition, this Court would add thereto informing that possession of vehicle in the hands of the petitioner would in turn lead to easy access thereto by her husband, who is the first accused. Such would be one more reason why this petition is to be dismissed. Again, extending the reasoning in Sunderbhai's case to the facts of the particular case, this Court in Sundaram Finance Ltd., V. The State of Tamil Nadu, 2011 (1) MWN (Cr.) 437 has observed as follows:

"11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon'ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a

particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all."

9. In the circumstances of this particular case, it would be proper and this Court directs the Court below to effect sale of the vehicle by public auction and credit the proceeds to the credit of the case. Before doing so, the Court below shall cause photographs of the vehicle to be taken and record panchanama thereof, the photographs taken shall be read as secondary evidence during trial and production of the vehicle shall be dispensed with. This, on the one hand, would secure the interests of petitioner at the end of the trial if eventually it is found that she is entitled to return of the vehicle. On the other, the availability of proceeds would go a long way in affording compensation to the victim, if such need arises.

The Criminal Revision Petition shall stand dismissed with the above directions.

Sd/-

Assistant Registrar(AS)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

WEB COPY

To

1.The Chief Judicial Magistrate,
Namakkal.

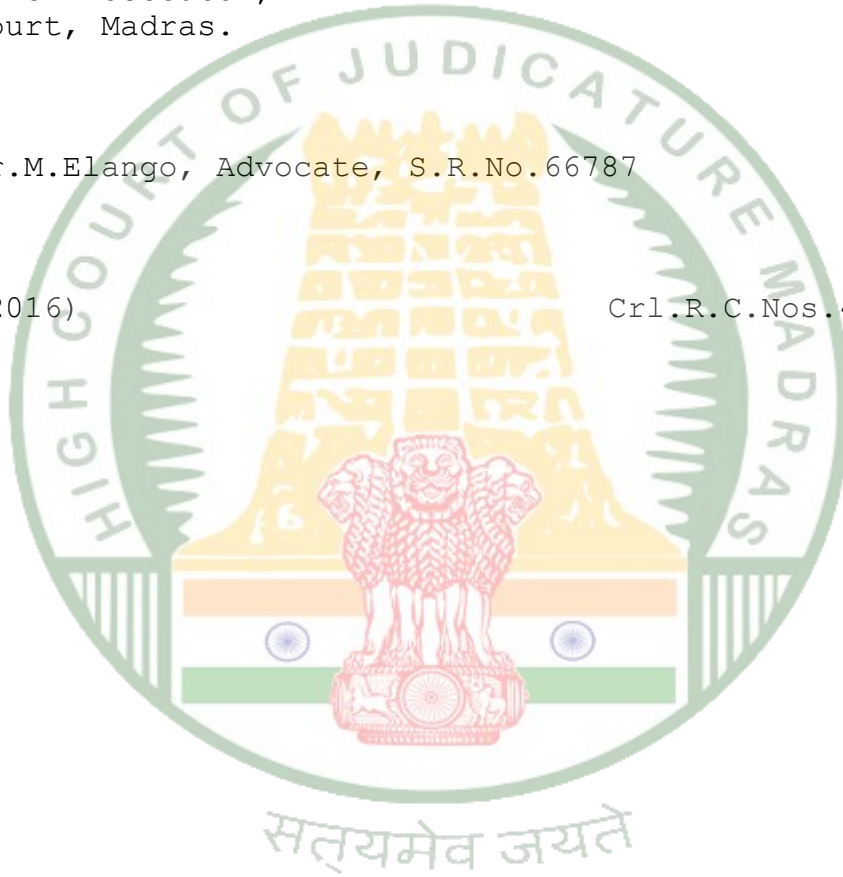
2.The Additional Deputy Superintendent of Police,
CBCID, Namakkal.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Elango, Advocate, S.R.No.66787

(CO) kgk
Cp(28/12/2016)

CrI.R.C.Nos.409 of 2016



WEB COPY