

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.04.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.R.C.No.648 of 2016

Palani

..Petitioner

Vs.

State rep. by its
Inspector of Police,
Kanchi Taluk Police Station,
Kancheepuram District

...Respondent

Prayer: Petition filed under Sections 397 and 401 of Cr.P.C., to set aside the Order dated 22.03.2016 made in Crl.M.P.No.676 of 2016 passed by the Learned Judicial Magistrate No.2, Kancheepuram and return the vehicle JCB bearing Reg.No.TN-21-J-8286.

For Petitioner : Mr.M.G.Udhaya Shankar for
M/s G.Punniyakotti

For Respondent : Mr.V.Arul
Government Advocate (Crl.Side)

O R D E R

Heard both sides. With consent of both sides, the main Criminal Revision Case itself is taken up for disposal.

2.The Petitioner has preferred the instant Criminal Revision Case before this Court as against the Order dated 22.03.2016 in Crl.M.P.No.676 of 2016 passed by the Learned Judicial Magistrate No.2, Kancheepuram.

3. The Learned Judicial Magistrate No.2, Kancheepuram while passing the Impugned Order on 22.03.2016 in Crl.M.P.No.676 of 2016 filed by the Revision Petitioner observed that the Revision Petitioner is one of the accused and further that the other accused were not arrested in the case and if the case property was to be handed over to him, then, the investigation of the case would get affected and although this Court had power under Section 451 of Cr.P.C to handover the case property, yet in view of the fact that in the case that absconding accused are in the stage of being arrested and at the present stage, if the property is handed

over, then, it would affect the investigation of the case and resultantly dismissed the Petition.

4. Assailing the correctness and legality of the Impugned Order dated 22.03.2016 passed by the trial court in CrI.M.P.No.676 of 2016, the Learned Counsel for the Revision Petitioner submits that the defacto complainant is brother of one Suganthi and the defacto complainant was said to have been present at the time of occurrence along with his brother Balamurugan on 07.02.2016 at 10.00 a.m., and all the four accused engaged in demolishing the sister's house of the defacto complainant.

5. It is represented on behalf of the Petitioner that according to the complaint, the Petitioner / A.5 was driving the JCB vehicle bearing TN21-J-8286 and while he was driving the vehicle and when the demolition was carried on, he questioned the accused and thereafter he left the place of occurrence leaving the vehicle.

6. The Learned Counsel for the Petitioner / A.5 brings it to the notice of this Court that the Petitioner / A.5 had secured an Anticipatory Bail in CrI.M.P.No.386 of 2015 on the file of Learned Sessions Judge, Sessions Court No.II, Kancheepuram and that the vehicle is in the custody of the Respondent.

7. The main grievance of the Revision Petitioner / A5 appears to be that he has to pay the Hire Purchase instalment amount based on the income from the vehicle. As such, if the vehicle in question is not returned to him, his livelihood would be affected to a great extent.

8. It is to be noted that the power to be exercised by a Court of Law Under Section 451 of Cr.P.C., are summary in character. No wonder, the power under Section 451 of Cr.P.C., is to be exercised by a Court of Law in an expeditious fashion and also in a judicious way. It is to be remembered that the owner of the vehicle ought not to suffer because of the fact that the vehicle in question remains un-utilised. Also that the Court or Police is not required to keep the vehicle under its custody. If proper Zimanama before handing over the vehicle is prepared, that can be made use of by the trial court in evidence instead of production of the vehicle at the time of trial of the main case. If necessary an evidence may also be recorded and detailing the nature of the property in detail.

9. Continuing further, the trial court is entitled to pass an Order under Section 451 Cr.P.C., only after physical or symbolical production of seized vehicle before the Court and that too after hearing the both parties. Further for a

disposal of the vehicle, the property necessarily must be under the control of the trial court.

10. As far as the present case is concerned, this Court on going through the Impugned Order of the trial court dated 22.03.2016 in Crl.M.P.No.676 of 2016 passed by the Learned Judicial Magistrate No.II, Kancheepuram is of the considered view that the trial court is not correct in Law in making observations in the Impugned Order interalia to the effect that "the other accused were not arrested and at that stage, if the case property was to be handed over to the Petitioner, the investigation of the case would be affected" etc., are in fact, clearly unsustainable in the Eye of Law. Therefore, this Court to prevent an aberration and to promote substantial cause of justice interferes with the said Order dated 22.03.2016 in Crl.M.P.No.676 of 2016 passed by the Learned Judicial Magistrate No.2, Kancheepuram and sets aside the same. Resultantly, the Criminal Revision Case succeeds.

In the result, the Criminal Revision Case is allowed. The Impugned Order dated 22.03.2016 in Crl.M.P.No.676 of 2016 on the file of Learned Judicial Magistrate No.2, Kancheepuram is set aside by the Court for the reasons assigned in the Criminal Revision Case. The Learned Judicial Magistrate No.2, Kancheepuram is hereby directed to restore the Crl.M.P.No.676 of 2016 on his file within a period of one week from the date of receipt of a copy of this Order and to dispose of the said Miscellaneous Petition (filed under Section 451 of Cr.P.C., for return of property) within a period of two weeks thereafter by passing a reasoned speaking order in qualitative and quantitative and that too in a dispassionate manner uninfluenced and untrammelled with any of the observations made by this Court in this Criminal Revision Case. It is open to the Revision Petitioner / A.5 to raise all factual and legal pleas before the trial court at the time of fresh hearing and determination of Crl.M.P.No.676 of 2016 in the manner known to Law and in accordance with Law.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Judicial Magistrate No.2,
Kancheepuram.

2. The Inspector of Police,
Kanchi Taluk Police Station,
Kancheepuram District.

3. The Public Prosecutor
High Court, Madras.

+1 cc to Mr.G.Punniyakotti, Advocate, sr.24371

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