

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.479 of 2016

Mohan Kumar

.. Petitioner

Vs.

State of Tamil Nadu
Rep. by Deputy Superintendent of Police
CBCID Kanchipuram Range
Villupuram.
Crime No.5/2014

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the order dated 03.09.2015 made in Crl.R.P.No.11/2015 on the file of the learned Principal District Judge, Villupuram, confirming the order dated 09.03.2015 in Crl.M.P.No.130/2015 on the file of the learned Chief Judicial Magistrate, Villupuram, to set aside the same and direct the respondent to release the vehicle Mahindra and Mahindra Ltd. TATA Ace bearing Registration No.TN 73 F 9340 to the petitioner herein.

For Petitioner : Mr.S.Saravana Kumar

For Respondent : Mr.C.Emalias
Addl. Public Prosecutor

O R D E R

This petition is filed for setting aside the order dated 03.09.2015 made in Crl.R.P.No.11/2015 on the file of the learned Principal District Judge, Villupuram, confirming the order dated 09.03.2015 in Crl.M.P.No.130/2015 on the file of the learned Chief Judicial Magistrate, Villupuram and also for issuing a direction to the respondent to release the vehicle: Mahindra and Mahindra Ltd. TATA Ace bearing Registration No.TN 73 F 9340 to the petitioner herein.

2.The petitioner has filed a petition in C.M.P.No.130 of 2015 under Section 451 Cr.P.C. for return of the vehicle namely, Mahindra and Mahindra Ltd. TATA Ace bearing Registration No.TN 73 F 9340 to him. A case in Crime No.5 of 2014 has been registered for the offences punishable under

Sections 120(b), 379, 407 and 272 IPC. During investigation, the said vehicle, which belongs to the petitioner has been seized. Hence, the petitioner has constrained to file the petition in C.M.P.No.130 of 2015. The trial Court, after hearing both sides, dismissed the petition, against which, the petitioner has preferred Crl.R.P.No.11 of 2015 for return of vehicle and the same was also dismissed. Aggrieved over the same, the petitioner has come forward with this petition for the above stated relief.

3.Learned counsel for the petitioner submits that the petitioner is not an accused and his father alone has been arrayed as accused in Crime No.5 of 2014. He further submits that the said vehicle was used for transporting milk. If the vehicle is exposed to sun and rain, its value will be deteriorated. But both the Courts below have not considered the above aspect. Therefore, he prays for return of vehicle.

4.Heard the learned Additional Public Prosecutor.

5.The ownership of the vehicle is not disputed. The only point to be considered is whether the petitioner is entitled to interim custody of the vehicle? As per the decision of the Honourable Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat* reported in (2002) 10 SCC 283, in para-17, it was held that it is of no use to keep the 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.

6.It is true, the petitioner's vehicle was used for commission of offence. But the petitioner is not an accused and he is the owner of the seized vehicle. Applying the dictum laid down in *Sunderbhai Ambalal Desai v. State of Gujarat* reported in (2002) 10 SCC 283, I am of the view, it is a fit case for granting interim custody of the vehicle to the petitioner and 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 interim custody of the vehicle bearing Registration No.TN 73 F 9340, is ordered to be entrusted to the petitioner till the disposal of the case, on executing a bond for a sum of Rs.3,50,000/- (Rupees three lakhs fifty thousand only) together with two sureties before the learned Chief Judicial Magistrate, Villupuram;

(ii)The petitioner shall produce the photographs of the vehicle and establish the ownership of the vehicle by producing necessary original certificates before the learned Chief Judicial Magistrate, Villupuram and the concerned

Magistrate on verification, shall retain the original documents, if necessary.

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

(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.

7.With the above direction, the Criminal Original Petition stands disposed of.

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Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Deputy Superintendent of Police,
CBCID Kanchipuram Range,
Villupuram.

2.The Public Prosecutor, High Court, Chennai.

3. The Chief Judicial Magistrate, Villupuram.

+ 1 cc to Mr.S.Saravana Kumar, Advocate Sr 21242

KR/11/4/16

सत्यमेव जयते

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