



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2016

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THE HONOURABLE MR. JUSTICE M. VENUGOPAL

CrI.R.C. (MD) No. 626 of 2015

M. Krishnakumar

... Petitioner/Petitioner

Vs.

The Inspector of Police,
Economic Offences Wing,
Tirunelveli District
which was then pending before
the Inspector of Police,
Economic Offences Wing No. II,
Nagercoil in
Crime No. 10 of 2011.

.. Respondent/Respondent

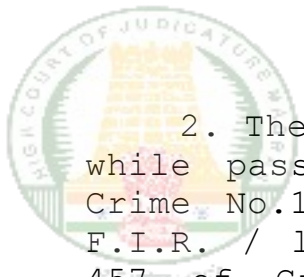
Prayer: Criminal Revision Petition is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records of the learned Special Judge (TNPID Court), Madurai in Cr.M.P.No.1705 of 2015 in Crime No.10 of 2011 dated 10.10.2015 and set aside the condition that the petitioner to deposit Rs.5,00,000/- (Rupees Five Lakhs) the value of the vehicle in this case and deposit the original R.C.Book and order custody and possession of the car (white colour Maruthi SX4) bearing Registration Number TN-77-7585 with chassis number MA3FFEBIS00183004 and Engine number D13A1569425 to the petitioner which is under the custody of the respondent.

For Petitioner : Mr.M.Gururaj

For Respondent : Mr.P.Kandasamy
Govt. Advocate (CrI.side)

O R D E R

The Revision Petitioner/A5 has filed the present Criminal Revision Petition before this Court as against the order dated 10.10.2015 in Cr.M.P.No.1705 of 2015 in Crime No.10 of 2011 passed by the Learned Special Judge under Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997,



2. The Learned Special Judge (under TNPID Act Cases), Madurai, while passing the impugned order in Cr.M.P.No.1705 of 2015 in Crime No.10 of 2011 filed by the Revision Petitioner / A1 in F.I.R. / later arrayed as A5 in the charge sheet) under Section 457 of Criminal Procedure Code, had *inter alia* observed as follows:

'The learned Public Prosecutor argued that the vehicle may be returned only on the deposit of the value of the vehicle. The prosecution has taken steps to attach the vehicle and other immovable properties under TNPID Act. The vehicle was not purchased by the petitioner in his own money. The vehicle is now parked ideally and its utility value will be decreased.

Therefore, for the safe custody the vehicle is returned to the petitioner on the condition that the petitioner is directed to deposit Rs.5,00,000/- (Five Lakhs) the value of the vehicle in this case and deposit the original R.C.book. Further the petitioner should not make any encumbrance in the form of sale or mortgage and directed to produce the vehicle before this Court once in month that is on every 5th day of each month'

and consequently, allowed the petition.

3. Assailing the correctness of the order passed by the trial Court in Cr.M.P.No.1705 of 2015 dated 10.10.2015 insofar as it relates to the direction being issued to the Revision Petitioner to deposit Rs.5 lakhs for the release of car and the further condition to produce the same on every month and to surrender original documents of the car etc., the Revision Petitioner (now A5) has focused the present Criminal Revision Petition on the ground that the condition to deposit Rs.5 lakhs for the release of the car in question is an onerous, harsh and an excessive one. The Learned Counsel for the Petitioner in this regard submits that the car in question was purchased for Rs.6 lakhs and as such, the imposition of condition in directing the Petitioner to deposit Rs.5 lakhs is not a realistic one, considering the fact that the Revision Petitioner was falsely implicated in the case and in fact, there was no nexus that could be drawn by the Respondent/Police upon his car and the case. In short, it is the plea of the Petitioner that the seizure of the car had no connection with the case and that the Respondent/ Police cannot raise any objection to hand over the same to him for an interim custody. Before the trial Court, on behalf of the Respondent/Police, in the counter, to Cr.M.P.No.1705 of 2015, it was averred by the Respondent/Police that the Petitioner/A5 is one of the active partners and he behind the commission of the offence and as such, his name was purposely not included at the time of registration of the Company. Further, the car was produced before the trial Court on 05.01.2015 for the purpose of



remanding the same to judicial custody and it was returned with a direction to produce along with relevant records.

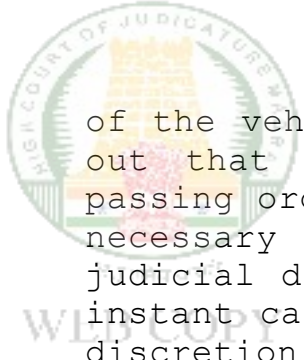
4. The core stand taken on behalf of the Respondent/Police is that the car was purchased from the depositors' money and the same was provided for the activities of accused company to the Petitioner/A5 by the Managing Director of the Company A2 (Sivakumar). Moreover, a proposal for ad-interim attachment was sent to the Government on 05.01.2015 and the same is pending for orders with the Government. Therefore, it is clear from the contents of counter filed by the Respondent/Police before the trial Court that he strongly objected to the interim custody of the car to the Petitioner/A5 (Krishnakumar), because the said car was only owned by the accused company, since the same was purchased out of swindled money in the financial establishment.

5. The trial Court, upon hearing the rival contentions, had ultimately, allowed the Cr.M.P.No.1705 of 2015 filed by the Revision Petitioner and ordered return of vehicle to the petitioner by imposing the condition that the Petitioner should deposit Rs.5 lakhs being the value of the vehicle in this case and deposit the original R.C.Book etc.

6. It is to be noted that in terms of ingredients of Section 457 of Criminal Procedure Code, the discretion to be exercised by a Court of Law must be judicially exercised and in fact, Section 457 of Criminal Procedure Code is a general provision which apply to all the cases where there is no enquiry or trial pending. An order under Section 457 of Cr.P.C., can be made during investigation and in fact, the Court need not wait until the trial or enquiry is concluded. The orders passed under Section 457 and 451 of Cr.P.C., are no doubt during the pendency of trial or enquiry. In fact, the criminal Court cannot determine the ownership of the vehicle in an enquiry under Sections 451, 452 or under Section 457 of Cr.P.C.

7. As far as the present case is concerned, the trial Court has ordered that the car (white colour Maruthi SX4) bearing Registration Number TN-77-7585 with chassis number MA3FFEBIS00183004 and Engine number D13A1569425 was to be returned to the petitioner by directing him to deposit a sum of Rs.5 lakhs and also imposing certain conditions like, the Petitioner should not make any encumbrance in the form of sale or mortgage and further directed to produce the vehicle before the trial Court once in a month i.e., on 5th day of each month.

8. The real grievance of the Petitioner/A5 appears to be that the direction to deposit Rs.5 lakhs being the value of the vehicle is harsh, exorbitant, excessive and an arbitrary one and that the petitioner is not in a position to comply with the condition relating to the deposit of Rs.5 lakhs towards the value



of the vehicle. At this stage, this Court very pertinently points out that a Criminal Court / a competent Court of Law, while passing orders under Section 457 of Cr.P.C., is entitled to impose necessary restrictions and in this regard, it has to exercise its judicial discretion, of course, based on sound principles. In the instant case, although the trial Court has exercised its judicial discretion in ordering the vehicle to be returned to the petitioner by directing him to deposit Rs.5 lakhs towards the value of the vehicle, but has also imposed other conditions. In this regard, the Learned Counsel for the Revision Petitioner brings it to the notice of this Court that the direction issued by the trial Court insofar as it relates to the deposit of Rs.5 lakhs being the value of vehicle to be made by the petitioner is an onerous, harsh, excessive, arbitrary one and all matters to be considered by the trial Court. It appears from the order passed by the trial Court that the Petitioner/A5 had not expressed his inability or incapacity in any form to deposit the value of Rs.5 lakhs. Even otherwise, this Court is of the considered view that the plea in regard to the direction being given to the Petitioner to deposit Rs.5 lakhs towards the value of the vehicle can very well be raised/agitated before the trial Court and in this regard, this Court disposes of the present Criminal Revision Petition by granting liberty/permission to the Petitioner/A5 to hear his grievance/difficulty to be expressed in regard to the deposit of Rs.5 lakhs towards the value of the vehicle by filing necessary Miscellaneous application citing necessary reasons thereto.

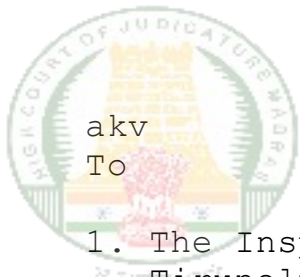
9. The said Miscellaneous application is directed to be filed by the Revision Petitioner/A5 before the trial Court within one week from the date of receipt of a copy of this order and as and when the application is filed and the same being in order and numbered, the trial Court is directed to dispose of the said Miscellaneous application by passing a speaking, reasoned order on merits in a dispassionate manner, uninfluenced and untrammelled by any of the observations made by this Court in this Revision (of course after providing necessary opportunity to the Respondent/Police for filing their counter and upon hearing their objections by adhering to the principles of natural justice).

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



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To

1. The Inspector of Police, Economic Offences Wing No.II,
Tirunelveli.

2. The Special Judge (TNPID Court),
Madurai.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Inspector of Police,
Economic Offences Wing No.II, Nagercoil

+1CC to Mr.M.Gururaj Advocate Sr.No.66

GJM/NGM/SS/28.1.16-5p-6C

CrI.R.C.(MD)No.626 of 2015
04.01.2016