



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2016

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THE HONOURABLE MR.JUSTICE DR.P.DEVADASS

Crl.R.C.(MD)No.459 of 2016

Subramanian

...Petitioner/Petitioner

Vs.

The State represented by  
the Inspector of Police,  
Devarkulam Police Station,  
Tirunelveli District.  
(Crime No.36 of 2016)

...Respondent/Respondent

Prayer: Criminal Revision Petition is filed under Section 397 r/w. 401 of Cr.P.C., against the order passed by the learned Judicial Magistrate No.III, Tirunelveli in Crl.M.P.No.1750 of 2016 vide his order dated 09.05.2016 whereupon the relief sought for by the petitioner under Section 451 of Cr.P.C. for getting his vehicle viz., TATA 407 bearing its registration No.TN 74 V 7837 returned to his custody was being negated.

|                |   |                           |
|----------------|---|---------------------------|
| For Petitioner | : | Mr.R.Anand                |
| For Respondent | : | Mrs.S.Prabha              |
|                |   | Govt. Advocate (Crl.side) |

### O R D E R

Aggrieved by the dismissal of his return of property petition in Crl.M.P.No.1750 of 2016 by the learned Judicial Magistrate No.III, Tirunelveli, the petitioner has directed this revision.

2. The petitioner is concerned in a case registered for an offence under Section 379 I.P.C., r/w. 21(1)(iv) of MMDR Act. It is a sand theft case. Presently, he was accused of having used his TATA 407 vehicle bearing Registration No.TN 74 V 7837 in committing the crime. The vehicle has been seized by the police. It has been produced before the learned Magistrate. Now, the vehicle remains in police station.

<https://hcservices.courts.gov.in/hcservices/> circumstances, the petitioner had sought for the return of the said vehicle on the ground that it is being exposed to open sky and ultimately, it will become useless and it will



become scarp value. He also submits that the principles laid down by the Honourable Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat* [2003(1) CTC 175 (SC)] squarely applies to this case.

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4. On the other hand, the learned Government Advocate (Crl.side) would submit that it is not a routine case. Previously, the petitioner had committed similar offence using the very same vehicle. The Court gave him interim custody of the vehicle. Again, he had used the said vehicle in committing the present offence. In such circumstances, no indulgence be shown to him.

5. In reply, the learned counsel for the petitioner would submit that let it be, then what will happen to the vehicle. The badge of criminality now alleged is to be adjudicated on evidence during trial. Now allegation has been made against him that he has involved the vehicle again in committing the crime. The petitioner is ready to give undertaking that he will not involve his vehicle in any crime and he will also abide by the conditions imposed by the Court.

6. I have anxiously considered the rival submissions and perused the impugned order and the materials on record.

7. If interim custody is refused, then what will be the fate of the vehicle. In the facts and circumstances, some sort of stringent condition need to be imposed.

8. In the circumstances, keeping the principles laid down by the Honourable Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat* [2003(1) CTC 175 (SC)], we pass the following order:

(i) This revision is allowed.

(ii) The impugned order of the learned Judicial Magistrate No.III, Tirunelveli passed in Crl.M.P.No.1750 of 2016 dated 09.05.2016 is set aside.

(iii) The learned Judicial Magistrate No.III, Tirunelveli shall give interim custody of TATA 407 vehicle bearing Registration No.TN 74 V 7837 to the revision petitioner.

(iv) The petitioner shall give an undertaking to the said Magistrate that he will not dispose of the vehicle till the disposal of the case and either directly or indirectly he will not involve the vehicle in any criminal activity.

(v) There shall be two sureties, they and the petitioner shall execute a bond for Rs.15,000/- (Rupees Fifteen Thousand only) each to the satisfaction of the said Magistrate.



(vi) He shall produce the vehicle before the said Magistrate on the first working day of every month at 10.30 a.m. until further orders.

Sd/-

Assistant Registrar (CSII)

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/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.III,  
Tirunelveli.
2. The Government Advocate,  
Madurai Bench of Madras High Court,  
Madurai.
3. The Inspector of Police,  
Devarkulam Police Station,  
Tirunelveli District.

+1cc to R.Anand, Advocate SR.No.44213

Crl.R.C. (MD) No.459 of 2016

11.08.2016

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