



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2016

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CORAM:

THE HONOURABLE DR. JUSTICE P.DEVADASS

Crl. R.C. (MD) No.534 of 2016

P.Balasubramani

... Revision Petitioner/
Petitioner

-vs-

State by
The Inspector of Police,
Aravakuruchi Police Station,
Karur District.
(Crime No.290 of 2016)

... Respondent/Respondent

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to set aside the order in C.M.P. No.4924 of 2016, dated 13.07.2016 on the file of the learned Judicial Magistrate No.II, Karur.

For Petitioner : Mr.R.Mathiyalagan

For Respondent : Mrs.S.Prabha
Govt.Advocate (Crl.Side)

O R D E R

Aggrieved by the dismissal of his property return petition in C.M.P.No.4924 of 2016 by the learned Judicial Magistrate No.II, Karur, the petitioner has directed this revision.

2.In connection with a kidnapping case, Aravakuruchi Police registered a case in Crime No.290 of 2016. Several persons were arrested. One of them is A5. He is the petitioner herein. In connection with the case, his Maruthi Omni Van TN 69 AA 6399 has been seized by the police. A5 filed the property return petition in C.M.P.No.4924 of 2016 for interim custody of the same. It was strongly objected to by the prosecution.



3. On 13.07.2016, considering the gravity and nature of the offence, the learned Judicial Magistrate No.II, Karur dismissed the petition.

4. The learned counsel for the petitioner would contend that the petitioner will not alienate the Van. The Van is needed for his use. If it is unused it will become useless. He will abide by the conditions as the Court deems fit and impose.

5. The learned Government Advocate (Criminal side) submitted that the Van has been used in kidnapping a girl.

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

7. Section 451 Cr.P.C. deals with giving an interim custody of the property pending trial. The Court has to consider whether the petitioner is entitled to the property and the Court need not consider the gravity of the offence alleged against the petitioner.

8. This matter is covered by the Hon'ble Apex Court decision in **Sunderbhai Ambalal Desai v. State of Gujarat [2003 (1) CTC 175 (SC)]**. In the said case, the Hon'ble Supreme Court laid down certain conditions, precautionary measures to safeguard the property as well as the interest of the prosecution case.

9. In **Sunderbhai Ambalal Desai** (Supra), the Hon'ble Supreme Court did not say that the gravity of the offence has to be considered. The reasoning of the learned Judicial Magistrate is palpably wrong. It is his own thinking. But, it has no sanction of law.

10. In the circumstances, it is ordered as under:

- i. This criminal revision is allowed.
- ii. The impugned order, dated 13.07.2016, passed in C.M.P.No.4924 of 2016, by the learned Judicial Magistrate No.II, Karur, is set aside.
- iii. The said Magistrate will give interim custody of the Maruthi Omni Van TN 69 AA 6399 to the revision petitioner.
- iv. The revision petitioner will execute a personal bond for Rs.1,00,000/- (Rupees One Lakh only) to the satisfaction of the said Magistrate.
- v. The Van shall be photographed and it shall be kept in the case records.
- vi. As and when so directed the Van shall be produced before the Court.
- vii. Till final property order is passed, the revision petitioner shall not dispose of or disfigure the vehicle.



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viii. However, he can carry out the minor repairs but to effect major repairs, he should get permission of the concerned Court.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To:

1. The Judicial Magistrate No.II,
Karur.
2. The Inspector of Police,
Aravakuruchi Police Station,
Karur District.
3. The Government Advocate (Criminal Side)
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.M.MATHIYALAGAN, ADVOCATE IN SR No. 43202/16

SJ

TE/SK-SKN/ : 18/08/2016 : 3P/5C

Cr1. R.C. (MD) No.534 of 2016
10.08.2016