



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASSCr1.RC(MD) No.581 of 2016

WEB COPY

Kesavan

... Petitioner / Petitioner

-vs-

State, rep. by
The Sub-Inspector of Police
Avudaiyarkovil Police Station
Pudukkottai District
(Crime No.141 of 2015)

... Respondent / Complainant

PRAYER : Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records in Cr.M.P.No.3264 of 2016, on the file of the Judicial Magistrate, Aranthangi and set aside the order, dated 20.06.2016.

For Petitioner: Mr.M.Suresh

For Respondent: Mrs.S.Prabha
Govt. Advocate (Cr1.Side)

O R D E R

Murder is a serious offence. Sometimes, it will also become a heinous offence. It may be a relevant point while considering the bail plea. But, it may not be a relevant point while considering the return of property petition filed either by the owner or by the accused.

2. The revision petitioner is an accused in Crime No.141 of 2015, registered by Avudaiyarkovil Police, initially under Section 302 I.P.C., and subsequently altered to Sections 120-B, 342, 302 and 201 I.P.C. In the course of investigation, the Investigation Officer has seized Discover 125 Motorcycle (TN55 AY9211). It has become a case-property in this case. The accused is stated to be the vehicle owner.

3. The revision petitioner / accused sought for interim custody of the said vehicle by filing Cr.M.P.No.3264 of 2016, before the learned Judicial Magistrate, Aranthangi. It was opposed to by the prosecution that if interim custody is given, he will change the very vehicle.

<https://hcservices.courts.gov.in/hcservices/> The learned Judicial Magistrate passed the impugned order, on 20.06.2016, dismissing the property return petition holding as under:



"Considering the facts and circumstances and one the perusal of the material records, and upon perusing the citations produced by the petitioner i.e., 2002 (9) Scale 153 - Sunderbhai Ambalal Desai /vs/ State of Gujarat and Judgment delivered by Hon'ble High Court, dated 3.2.2007 in Arun Alias Arumprasad Versus State by Inspector of Police, Rasupathipalayam P.S., Karur District, perused. On perusal of Record and submissions by petitioner, and respondent reveals that, the vehicle was involved in the commission of offence considering the nature and grievance of offence and the case is not yet committed to the session court. And if the property is given interim custody to the petitioner there is a chance to modify the nature of property is considered which this vehicle is one of the Property used to commit the offence.

Hence, this court is not inclined to allow this petition. Hence, petition dismissed."

5. The learned counsel for the revision petitioner contended that while stating the decision in *Sunderbhai Ambalal Desai vs. State of Gujarat* [2003 (1) CTC 175 (SC)] in her order, the learned Judicial Magistrate has not applied the law to the property return petition, when especially it applies to the facts of this case.

6. On the other hand, the learned Government Advocate (Criminal Side) submitted that the vehicle has been used in the commission of a serious offence. In such circumstances, if the interim custody of the vehicle is given to the very accused, the interest of the prosecution case will be spoiled and further no vehicle documents also have been filed by him.

7. In reply, the learned counsel for the revision petitioner submitted that investigation is over, final report also has been filed, the petitioner will produce all the vehicle documents before the learned Magistrate and he will abide by the terms and conditions, to be imposed by this Court.

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

9. Seriousness of the offence alleged is a relevant factor, if the accused seeks bail. But, it will be an irrelevant factor, when he seeks interim custody of the case-property. Magistrates have no power to try a sessions offence. But, they have full power to deal with property return petitions in a sessions case. A reading of the impugned order shows that the learned Judicial Magistrate is not aware of the law. The matter is covered under misconception. In the facts and circumstances, this matter is fully covered by the decision of the Apex Court in *Sunderbhai Ambalal Desai* (supra).



10. In view of the above, ordered as under:

- i. This revision is allowed.
- ii. The Order, dated 20.06.2016, passed in Cr.M.P.No.3264 of 2016, by the learned Judicial Magistrate, Aranthangi, is set aside.
- iii. The revision petitioner shall produce vehicle documents for verification to the said Magistrate.
- iv. The learned Magistrate, will give interim custody of the vehicle-Discover 125 Motorcycle (TN55 AY9211) to the revision petitioner.
- v. The revision petitioner will execute a personal bond for Rs.50,000/- (Rupees fifty thousand only) to the satisfaction of the said Magistrate.
- vi. It is made clear that no property document, Solvency Certificate or surety shall be insisted upon.
- vii. A photograph of the said vehicle shall be kept in the case-records.
- viii. Until final property order is passed by the Trial Court, the revision petitioner shall not dispose of, alter or change the said vehicle.
- ix. The revision petitioner shall also file an undertaking affidavit in the said Court to the effect that he will not dispose of the vehicle in any way, until final property order is passed.
- x. However, by filing proper application, he can seek permission of the Court to carry out repairs of the said vehicle.
- xi. The revision petitioner shall cause the production of the said vehicle as and when so ordered by the Court.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Judicial Magistrate, Aranthangi.
 - 2.The Government Advocate (Criminal Side),
Madurai Bench of Madras High Court, Madurai.
 - 3.The Sub-Inspector of Police,
Avudaiyarkovil Police Station, Pudukkottai District.
- +One cc to Mr.M.Suresh, Advocate, SR.No.48234

krk

RL/5C/3P/SK/SKN/8/9/2016

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30/08/2016