



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Cr1.RC(MD) No.99 of 2016

Ramanathan

... Petitioner / Petitioner /
Owner of the Vehicle

-vs-

State, represented by
The Sub-Inspector of Police
Devipattinam Police Station
Ramanathapuram District

... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the entire records pertaining to the order passed by the Additional District & Sessions Judge / Presiding Officer Special Court for EC & NDPS Act Cases, Pudukkottai in Cr1.M.P.No.1450 of 2015 vide its order dated 02.02.2016 and quash the same and consequently direct the above said learned Special Judge to return the vehicle namely Lancer Car (Black Color) bearings its registration No.TN33 AB6162 in connection with the case in Crime No.8 of 2015 pending on the file of the respondent to the petitioner.

For Petitioner : No Appearance

For Respondent : Mr.S.Prabha

Govt. Advocate (Cr1.Side)

ORDER

The Car Owner / A1 aggrieved by the dismissal of his property return petition in Cr.M.P.No.1450 of 2015, by the learned Special Judge under E.C. & N.D.P.S.Act, Pudukkottai, has directed this revision.

2. In connection with Crime No.8 of 2015, Devipattinam Police seized a Lancer Car (TN33 AB6162). The Car has been produced with Form-95 to the Court. It has become a case-property. The revision petitioner filed Cr1.M.P.No.1450 of 2015 for interim custody of the same to him. It was opposed to by the learned Special Public Prosecutor that investigation is pending, if the Car is given, again it will be used for committing similar offence.



3. The learned Special Judge passed one line order, which runs as under:

"Considering the contentions raised by the Special Public Prosecutor, this petition is dismissed."

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4. This is not a proper way of disposal of an application by a judicial order. Judicial orders must be passed in accordance with law. Disposal of a property return petition solely based on the contentions of the learned Special Public Prosecutor is not accordance with law. What the learned Judge has to do is that he must go through the averments in the petition, counter, if any filed by the prosecution, consider the arguments of both sides, peruse the materials on record, apply his mind and also law on the point including relevant case-law and then pass orders. This will be according to law. Thus, the order passed by the learned Special Judge is not in accordance with law. So, we will pass orders according to law.

5. The petitioner is A1 in this case. He is the Car Owner. In ***Sunderbhai Ambalal Desai vs. State of Gujarat [2003 (1) CTC 175 (SC)]***, the Hon'ble Apex Court held that the material objects like vehicle have to be preserved, if they were exposed to open sky, kept idle, they will become useless. Car Owner may be a third party. Sometime, he may be accused himself. With suitable directions, return of the property can be considered. In passing the impugned order, the learned Special Judge has failed to apply the principle laid down in ***Sunderbhai Ambalal Desai*** (supra). Thus, our interference is called for.

6. Ordered as under:

- i. This revision is allowed.
- ii. The Order, dated 02.02.2016, passed in Cr.M.P.No.1450 of 2015, by the learned Special Judge under E.C. & N.D.P.S.Act, Pudukkottai, is set aside.
- iii. The learned Special Judge, will give interim custody of Lancer Car (TN33 AB6162) concerned in Crime No.8 of 2015 to the revision petitioner. R.C.Book shall not be retained by the Court.
- iv. The revision petitioner will execute a personal bond for Rs.5,00,000/- (Rupees five lakhs only) to the satisfaction of the said Special Judge.
- v. A photograph of the said Car with the signature of the revision petitioner shall be kept in the case records.
- vi. Until final property order is passed by the Trial Court, the revision petitioner shall not dispose of, alter or change the said Car.



- vii. The revision petitioner shall also give an undertaking affidavit to the said Court to the effect that he will not dispose the Car in any way, until final order is passed. However, by filing proper application, he can seek permission of the Court to carry out repairs of the said Car.
- viii. The revision petitioner shall cause the production of the said Car as and when so ordered by the Trial Court.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Special Judge
under E.C. & N.D.P.S.Act,
Pudukkottai.
- 2.The Additional Public Porsecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Sub-Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.

+1cc to Mr.Pitchai muthu,Advocate Sr.No.35570
krk
AA/ARK-PV/18.07.2016/3p-5c

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