

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Criminal Revision Case No.1430 of 2017

S.Vishnu Vardhan

... Petitioner / accused

..Vs..

The Sub-Inspector of Police,
PEW, Hosur, Krishnagiri District
(Crime No.1265/2017)

... Respondent / complainant

Criminal Revision Petition filed under Section 397 read with 401 of the Criminal Procedure Code, against the order passed in C.M.P.No.5161 of 2017 in Crime No.1265 of 2017 on the file of the learned Judicial Magistrate No.II, Hosur, dated 31.10.2017.

For Petitioner : Mr. B.Kumarasamy

For Respondent : Mr. V.Arul,

Additional Public Prosecutor

O R D E R

The order, dated 31.10.2017, declining to handover the vehicle, TN78-T-5063, Maruti Swift White Colour Car, to the petitioner herein is under challenge, in this Revision Petition.

2. A case has been registered in Crime No.1265 of 2017 in which the car has been recovered in Form-91 and it has not been handed over to the concerned Court and it is in the custody of the Police.

3. The petitioner herein has moved an application under Section 451 of the Criminal Procedure Code before the trial court, stating that the vehicle has nothing to do with the alleged offence and that he is not involved in any offence much less in the case in respect of which the vehicle has been seized and therefore, he is entitled to the custody of the vehicle. This Application has been dismissed on the ground that the return of the vehicle has been objected to by the prosecution on

the ground that the confiscation proceedings are pending.

4. Therefore, the issue to be decided is, whether pendency of the confiscation proceedings would be a bar for the power of the learned Magistrate to order return of the vehicle to the petitioner.

5. The learned counsel appearing for the revision petitioner would rely upon the judgment of this Court, in the case of S.Vijaya v. State, Rep. by its The Sub-Inspector of Police and two others, decided on 28.04.2016, where-under a similar objection, i.e., pendency of confiscation proceedings has been taken to order return of vehicle and despite the objection taken, the Court has ordered return of the vehicle and the relevant observation reads thus:-

"19. Furthermore, Section 102 Cr.P.C., defines the power of Police Officer to 'seize certain property' especially where the allegation of commission of an offence is alleged. As a matter of fact, Section 102 Cr.P.C., speaks of any offences and is wide enough to cover offences either under the Indian Penal Code or under any special statute, as opined by this Court. Moreover, for an application of Section 102 Cr.P.C., the essential requirements are that the properties said to be seized or frozen must be either stolen property or they should have been found to have some nexus with the alleged offence, which is under investigation of the concerned Police Officer, as per decision Rajamani Vs Inspector of Salem reported in 2003 CrLJ page 2902 at special page 2903."

6. It is submitted that if the vehicle is kept in open space at the Police Station, during sunshine and rain, the battery and engine would get rusted and the tyres would get worn out.

6.1. It is also submitted that the terms and conditions under which the vehicle has been ordered to be returned in the cited case can also be imposed by this Court and that the petitioner is prepared to obey the same.

7. The learned Additional Public Prosecutor appearing for the respondent would submit that confiscation order has been already passed on 21.10.2017 and therefore, there is no scope for return of the vehicle.

7.1. This contention cannot be correct, in view of the order passed by the learned Magistrate and also in view of the subsequent submission that the value of the vehicle has been ascertained only now.

7.2. From the order passed by the learned Judicial Magistrate, it is clear that no such confiscation order could have been passed on 21.10.2017, as the representation made to

the Court is that the confiscation proceedings are pending and not that it is already passed. It is now stated that the value has been fixed and further proceedings are to go on. Therefore, this Court is of the view that, till the final decision is taken one way or other and subject to the challenge made therein for confiscation, the property can be ordered to be returned subject to the terms and conditions as passed in the earlier case.

8. Hence, the Respondent/Complainant/Police is directed to produce the vehicle, TN78-T-5063, Maruti Swift White Colour Car, before the learned Magistrate, forthwith. On receipt of the same, the learned Magistrate shall handed over the vehicle to the Revision Petitioner herein, subject to the fulfillment of following conditions, by the Petitioner:-

a) Soon after the production of the vehicle viz., Maruti Swift White Colour Car, bearing Registration No.TN78-T-5063, before the trial Court, the Petitioner is directed to produce all the necessary documents relating to the ownership of the vehicle.

b) The Petitioner shall execute a bond for a sum of Rs.20,000/- along with two sureties like sum to the satisfaction of the Learned Judicial Magistrate No.II, Hosur;

c)The Petitioner shall surrender the R.C.Book and the Learned Judicial Magistrate No.II, Hosur, is at liberty to return the R.C.Book, in case of renewal, or for any other lawful purpose.

d) The Petitioner shall furnish an affidavit of undertaking to the effect that he will cause production of the vehicle in question before the appropriate/competent authority/Court, as and when called for and further, he will not alienate the vehicle in question till the appropriate proceedings are completed.

e) Except carrying out the minor repairs to ensure road-worthiness, the Petitioner shall not alter the character and nature of the vehicle.

f)The Petitioner should give an undertaking to produce the vehicle as and when required by the requisite authority/Prohibition Officer duly authorized in that behalf by the Government."

9. Subject to the above terms, the Criminal Revision Case is allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srk

To

1. Judicial Magistrate No.II,
Hosur.

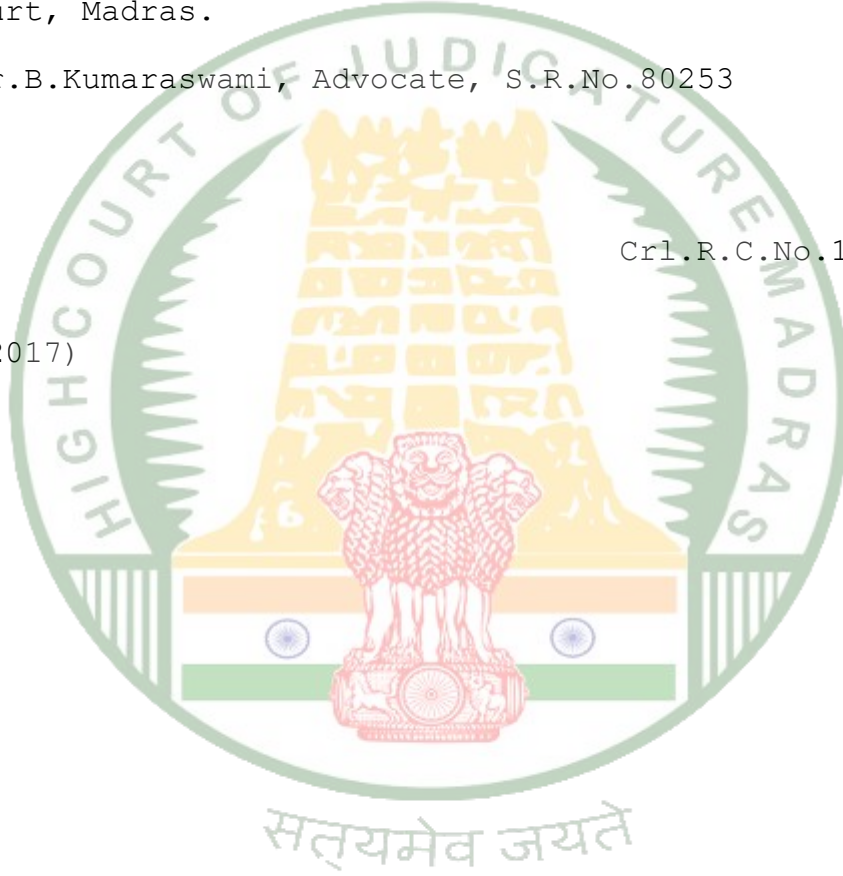
2.The Sub Inspector of Police,
PEW, Hosur,
Krishnagiri District.

3.The Public Prosecutor,
High court, Madras.

+1cc to Mr.B.Kumaraswami, Advocate, S.R.No.80253

Crl.R.C.No.1430 of 2017

RSK(CO)
GN(13/11/2017)



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