

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

Crl.R.C.No.1538 of 2017

Saleel Nair M.

... Petitioner

Vs.

The Sub-Inspector of Police,
Thoppur Police Station,
Dharmapuri District.

... Respondent

Prayer:- Revision filed under Section 397 & 401 Cr.P.C. against the order dated 27.11.2017 passed in C.M.P.No.4816 of 2017 by the learned Judicial Magistrate II, Dharmapuri District, by dismissing the plea of permission to sell the seized property granted under interim custody from judicial custody.

For Petitioner : Ms.M.Dhivya

ORDER

The order dated 27.11.2017, passed by the learned Judicial Magistrate No.II, Dharmapuri, declining permission to sell the properties, which have been entrusted with the petitioner, is under challenge in this revision.

2. Heard the learned counsel for the revision petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. It is not in dispute that the petitioner herein is the owner of 254 tyres which are the properties said to have been produced by the Investigating Officer before the learned Judicial Magistrate No.II, Dharmapuri. It is also not in dispute that interim custody of the properties is entrusted with the petitioner by order dated 05.10.2017 passed in C.M.P.No.4207 of 2017.

3.1. The petitioner has filed a petition before the learned Judicial Magistrate No.II, Dharmapuri, stating that the efficiency of tyres will get diminished if kept idle and, therefore, the permission was sought to dispose of the properties by sale.

3.2. Objections have been raised on the ground that those properties would be required for identification at the time of trial.

3.3. Accepting the same, the learned Judicial Magistrate has chosen to dismiss the petition for sale of the properties.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record as also the order passed by the learned Judicial Magistrate.

5. It is not as if the identity of the properties can be established only by actual production of the properties. The identification can also be established by taking photographs of the properties and accept the same during trial. The above proposition has been reiterated by the Supreme Court in the case of ***Sunderbhai Ambalal Desai vs. State of Gujarat***, wherein direction has been issued to the learned Judicial Magistrate concerned to dispose of the properties without keeping the same idle and spoiling the life of the said articles. The relevant portion of the said judgment, for better clarity, is extracted hereunder :

“Valuable Articles and Currency Notes With regard to valuable articles, such as golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

For this purposes, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

(1) preparing detailed proper panchanama of such articles:

- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- (3) after taking proper security.

For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs or such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.P.C. to impose any other appropriate condition.”

6. Therefore, it is not fair on the part of the learned Judicial Magistrate to have declined permission for sale of the properties. Hence, the order declining permission for sale of the properties is liable to be set aside.

7. Accordingly, the Criminal Revision Case is allowed setting aside the order passed by the learned Judicial Magistrate No.II, Dharmapuri in C.M.P.No.4816 of 2017 dated 27.11.2017.

8. It is submitted that the photographs have already been taken by the

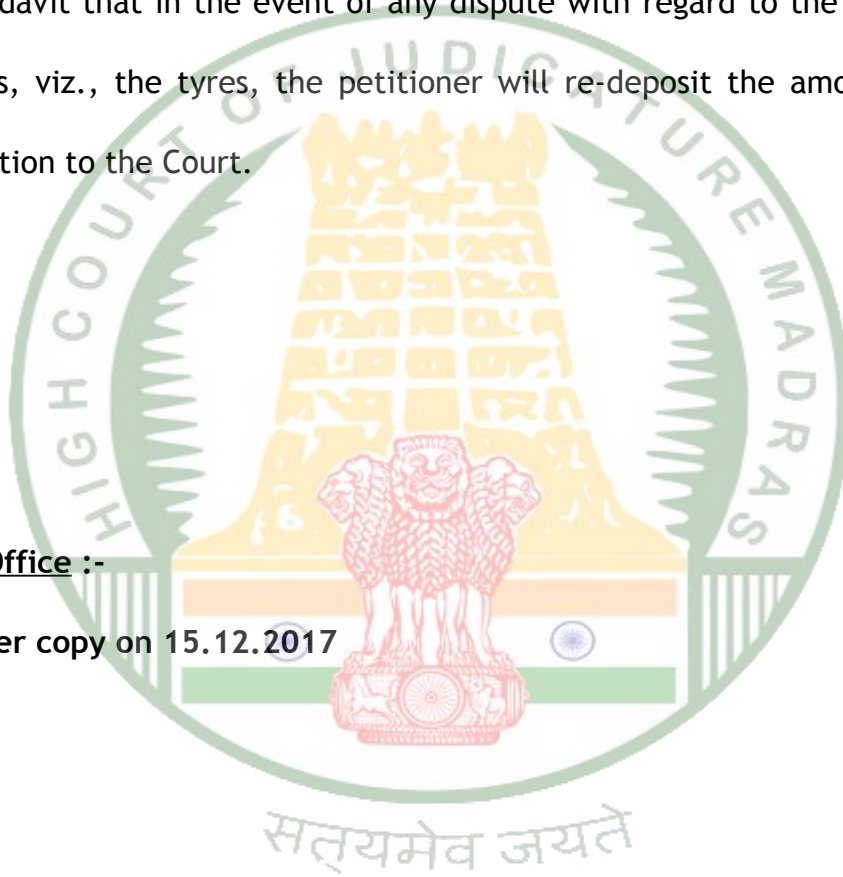
petitioner and the same have been produced before the learned Judicial Magistrate for the purpose of being identified at a later point of time. As the photographs have already been taken, there is no necessity to take fresh photographs of the properties. The petitioner shall file an undertaking by way of an affidavit that in the event of any dispute with regard to the title to the properties, viz., the tyres, the petitioner will re-deposit the amount of sale consideration to the Court.

11.12.2017

ogy

Note to Office :-

Issue order copy on 15.12.2017



WEB COPY

DR.S.VIMALA, J.

ogy



Crl.R.C.No.1538 of 2017

WEB COPY 11.12.2017