

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.No.776 of 2017

Thamin Ansari @ T.Ansari

...Petitioner

VS

State rep. by
Sub Inspector of Police,
Thirukalukundram Police Station,
Kancheepuram District.
Crime No.280 of 2017.

...Respondent

Prayer: Criminal Revision Petition has been filed under Section 397 read with 401 of the Criminal Procedure Code to allow the above revision and set aside the order dated 01.06.2017 passed in Crl.M.P.No.2119 of 2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram and to direct the respondent to return the property of 3 loads of scraps stated in the affidavit to the custody of the Revision Petitioner.

For Petitioner : Mr.R.Vijayakumar

For Respondent : Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

This Criminal Revision Petition has been filed against the order passed by the District Munsif-cum-Judicial Magistrate, Thirukalukundram in C.M.P.No.2119 of 2017 in Crime No.280 of 2017 by order dated 01.06.2017.

2. The case of the respondent prosecution is that three lorries bearing Registration Nos. TN-22-BD 4863; TN-20-BE-7736 and TN-28-B-1285 were intercepted and the goods carried in those lorries i.e., iron scraps had been seized and had been produced before the Court below in Crime No.280 of 2017 for certain alleged offences.

3. Petitioner claiming to be the owner of the said goods i.e., iron scraps, had moved before the lower Court for interim custody of the said goods under Section 451 and 457 of Cr.P.C. When the said petition was heard by the lower Court, it was claimed by the petitioner that he is the owner of the said metal iron scrap, which he purchased for a valid consideration from various sources since he is doing the business of Metal Iron Scrap and when he transported the said materials it was intercepted and the same was wrongly seized by the respondent Police, therefore the petitioner claims interim

custody of said goods.

4. However, the respondent police opposing the said petition seems to have submitted before the trial Court that the subject goods are not belonging to the petitioner, but it belongs to one EMAS Company Limited and since the company was wound up, there is no one to take care of the property. Therefore, on that pretext the respondent opposed the petition for interim custody by stating that the petitioner is not the owner of the goods.

5. Considering the said claim and rival claim made by the parties, the Court below has come to the conclusion that though the petitioner has proved that he only purchased the said goods from Scrap Stores Unit, Kalpakkam, he was not able to prove that the said goods alone had been transported during the time of interception by the respondent Police. Therefore, the same cannot be given to the petitioner by way of interim custody.

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6. By stating this, the learned Judge has rejected the claim for the interim custody, by the impugned order dated 01.06.2017, against which, the present revision has been filed.

7. I have heard Mr.R.Vijayakumar, learned counsel appearing for the petitioner and Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondent.

8. Though the lower Court has accepted the plea of the petitioner that the subject goods had been purchased by the petitioner from Scrap Stores Unit, Kalpakkam, however, has not accepted that the said goods alone had been transported in the said three vehicles (lorries) which were intercepted and the goods were seized by the police. The reasons for the said conclusion on the part of the lower Court is that on perusal of the trip sheet produced by the petitioner, it is revealed that the subject property were transported in the name of Thirumalai Enterprises to Kamatchi Steels. Only based of these trip sheet, which were produced by the petitioner, the lower Court come to the conclusion that the subject goods which were transported on that day is not the only goods which was transported by the petitioner that alone has been purchased by him from Stores Unit at Kalpakkam.

9. However, the learned counsel appearing for the petitioner has produced all those bills and sale order issued by the Directorate of purchase and Stores Unit IGCAR, Kalpakkam. All these bills and sales order which have

been produced before this Court as well as delivery note on various dates have disclosed that, those goods, that is Metal Scrap, had been purchased by the petitioner from Kalpakkam Unit. In each of the sale order/bill or even delivery note, the name of the petitioner that is his Trade name M/s.Nagoor Meeran Traders has been specifically mentioned.

10. Only based on these documents, the lower Court seems to have come to the conclusion that the petitioner alone has purchased these properties and this aspect he was able to prove.

11. However, the learned Judge on the basis of the trip sheet produced by the petitioner has concluded that, in the trip sheet it has not been mentioned the Trade name of the petitioner i.e., M/s.Nagoor Meeran Traders. When this issue was specifically pointed out, the learned counsel appearing for the petitioner would submit, that after purchasing the Scrap, that are being sold only through a middle man or broker. Since, the Kamatchi Steels is one of the regular client, who used to purchase the Iron Scrap from the petitioner to whom the subject goods on that day had been transported through the broker and that is the reason why the Trip Sheet has been prepared in the name of the broker that is Thirumalai Enterprises to Kamatchi Steels.

12. Therefore in this regard, the learned counsel for the petitioner would submit that merely because a trip sheet contains the name of Thirumalai Enterprises it cannot be construed that the goods belongs to Thirumalai Enterprises. In this regard, the learned counsel for the petitioner would also submit that no one except the petitioner has made any claim so far over the subject goods before the Court below.

13. This aspect has also not been disputed by the respondent side and so far no one has made any claim and custody of the subject goods much less the said EMAS Company Limited.

14. All these factors would go to show that, since the petitioner has purchased the subject goods for which he has produced the bills not from any private concern but from a Government Organization, it cannot be denied that the petitioner has purchased the goods. Since, he has purchased the goods for a valid consideration and no one has so far claimed anything, it can very well be safely concluded that the goods in question atleast prima facie belongs to the petitioner and therefore interim custody could have been decided by the Court below, which has not been done by the said Court, on the reasons, which has been discussed above.

15. In these circumstances, this Court is of the considered view that this petition can be allowed and in the result the impugned order is set aside.

16. The subject goods i.e., Metals Iron Scrap seized by the respondent Police in Crime No.280 of 2017 shall be given for interim custody to the petitioner on condition that the petitioner shall execute a bond for a sum of Rs.4,00,000/- to the satisfaction of the District Munsif-cum-Judicial Magistrate, Thirukalukundram, within a period of two weeks from the date of receipt of a copy of this Order.

17. With these directions, the Criminal Revision Case is allowed.

No costs.

22.08.2017

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To

State rep. by
Sub Inspector of Police,
Thirukalukundram Police Station,
Kancheepuram District.

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R.SURESH KUMAR, J.

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