

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL. REVISION CASE No.821 of 2017

K.Sathappan

... Petitioner/Accused

Vs.

The Assistant Controller of Legal Metrology,
V Circle,
Chennai-35.

... Respondent/Complainant

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to call for the records in respect of the impugned order passed by the Learned XI Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.801 of 2017 in C.C.No.753 of 2017 dated 11.05.2017 and set aside the same.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.R.Sekar,
Govt. Advocate (Crl. Side)

ORDER

This Criminal Revision case has been filed against the order dated 11.05.2017 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.801 of 2017 in C.C.No.753 of 2017.

2. The case of the petitioner is that the lorry bearing Registration No.TN 20 BE 2399 was seized by the respondent, who is an officer from the department of Legal Metrology. According to the petitioner the lorry was entrusted to his driver and the same was misused by him. According to the petitioner there is an arrangement between him and the BPCL to transport the fuel from BPCL to petrol bunks. The tanker lorry ought to be used inconsonance with calibration. The case of the prosecution is that the tanker lorry was found with tampered setup and thereby the accused persons make out wrongful gain by committing theft of fuel in an illegal manner.

3. This act of pilferage according to the respondent, is a punishable offence within the meaning of section 26 of Legal Metrology Act, 2009 (in short, 'the Act').

4. Therefore, based on the complaint of the respondent, the vehicle was seized and the case is pending consideration before the concerned Magistrate Court.

5. Since the lorry was seized and has been kept idle, it is exposed to sun and rain and by thus the value of the vehicle will get diminished and if the lorry stands without being used, the whole machinery and system get affected and it may not be possible to use after some time. Therefore, the petitioner being the owner of the vehicle had filed a petition before the court below seeking for an interim custody of the vehicle.

6. The said petition has been dismissed by the impugned order as against which, the present revision has been filed.

7. I have heard Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner as well as Mr.R.Sekar, learned Government Advocate (Crl Side) for respondent.

8. Mr.R.C.Paul Kanagaraj, learned counsel for the petitioner would submit that even according to the respondent, it is a punishable offence within the meaning of Section 26 of the Act and even if the guilt is proved the maximum punishment shall be only imposing penalty of Rs.50,000/- (Rupees Fifty thousand only) and only in case of commission of the same offence, again, it will be imprisonment for a term not less than six months to one year.

9. The learned counsel would further state that though the main issue is a matter for trial, insofar as the present interim custody of vehicle is concerned, the petitioner undertakes that he would never get involved in any unlawful activity and he is willing and ready to produce the vehicle as and when required by the department. If the vehicle is allowed to remain idle till the completion of trial, certainly the value of the vehicle will get diminished and some times, it may even get completely rusted.

10. In this regard, the learned counsel would rely upon the decision of the Hon'ble Supreme Court reported in 2002 (10) SCC 283, in the matter of Sunderbhai Ambalal Desai Vs. State of Gujarat, The relevant portion of the Judgment is extracted hereunder:

"7. In our view, the powers under section 451 Cr.PC should be exercised expeditiously and

judiciously. It would serve various purposes, namely:

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

11. By citing the above decision, the learned counsel would submit that keeping the seized vehicle at the police station or in the premises of the court for a long period will be of no use to anyone and therefore the learned Magistrate ought to have considered the application for interim custody, by imposing any condition. However, the learned Magistrate without considering these aspects, has mechanically dismissed the application and learned counsel would submit that the impugned order is liable to be quashed/set aside.

12. Per contra, the learned Government Advocate (Crl. side) would submit that the learned Magistrate has given reasons in the impugned order that the trial had already commenced and the matter stands posted for examination of prime witness. At this stage, if the tanker lorry is released, it would stagnate the flow of fair trial. Only on completion of trial, there can be a ground to release the vehicle. Because of all these reasons, the Magistrate has rejected the interim custody of the vehicle.

13. The learned Government Advocate, justified the impugned order and prays for dismissal of the revision case.

14. I have considered the rival submissions made by both sides.

15. As has been pointed out by the learned counsel appearing for the petitioner, since the alleged offence, as has been set out in the respondent case, is in violation of Section 26 of the Act, even after trial is completed and ultimately the petitioner is proved guilty, the maximum punishment will be a fine of Rs.50,000/- (Rupees Fifty thousand only). Moreover, if the vehicle is kept idly for a longer period and it is exposed to sun light and rain, certainly its value would get diminished.

16. In this regard, the guidelines, laid down by the Hon'ble Supreme Court, extracted supra, 2002 (10) SCC 283, can be applied to the present case.

17. If the vehicle is released on condition of execution of surety to the value of the vehicle itself with some workable conditions of this court feels that the purpose of smooth conducting after trial would be ensured. On the other hand, if the vehicle is not returned for interim custody, in the long run, the value would get diminished and ultimately, the petitioner/accused would sustain loss.

18. Considering these aspects, I am inclined to pass the following order in this revision:

(i) The court below shall release the vehicle in question by way of interim custody to the petitioner, on condition, that the petitioner shall execute a bond/surety, for the value of the vehicle, which according to the petitioner is approximately Rs.5,00,000/- (Rupees Five lakhs only), before the learned XI Metropolitan Magistrate, Saidapet, Chennai,

(ii) The petitioner shall not either transfer/sell or pledge the vehicle under any circumstances, until the trial is completed or further orders are passed by the trial Court.

(iii) The vehicle shall be photographed and photos and negative of the same shall be kept in safe custody by the respondent police for future usage, if need be.

19. Further, the petitioner is directed to produce the vehicle as and when required without making any tampering. If at all the petitioner wants to make any necessary repairs, the petitioner shall take permission in this regard from the court below.

20. Accordingly, the Criminal Revision case is disposed of.

The direction over stated including taking of Photograph shall be completed within a period of one week from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The learned XI Metropolitan Magistrate,
Saidapet, Chennai.

2.The Assistant Controller of Metrology,
V Circle, Chennai-35.

3.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.R.C. Paulkanagaraj, Advocate sr 13794.(07/08/2017)

Cr1.R.C.No.821 of 2017

AR(V)
VR(07/08/2017)

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