

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

CrI.R.C.No.999 of 2017

Saiyath Kathar

.. Petitioner

Vs.

The Sub Inspector of Police,
Ambur Taluk Police Station,
Vellore District, Crime No.233 of 2017
Respondent

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order made in C.M.P.No.2028 of 2017 on the file of the Additional District Munsif cum Judicial Magistrate, Ambur,Vellore District.

For Petitioner : M/s.Karan & Uday

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

ORDER

This criminal revision case has been filed against the order passed by the Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District in C.M.P.No.2028 of 2017 by order dated 12.07.2017.

2.It is the case of the petitioner that his lorry bearing Reg No.TN 23 F 0997 was seized by the Sub Inspector of Police / respondent, Ambur Taluk Police Station and the respondent has produced the same before the Court below in C.C.No.233 of 2017 for the offences under Section 379, 430 I.P.C.

3. Learned counsel for the petitioner submitted that the petitioner had moved the Trial Court for return of property under Sections 451 and 457 of Criminal Procedure Code. The said application was heard and decided by the Court below by the impugned order dated 12.07.2017, wherein the learned Judge had rejected the said application stating that since the petitioner being the second accused in Crime No.233 of 2017 and only the driver of the lorry has been arrested and the petitioner/owner of the vehicle who is also the second accused escaped during the occurrence of crime and after getting anticipatory bail, he surrendered before the Additional District Munsif cum Judicial Magistrate and therefore considering these aspects, the learned Additional District Munsif cum Judicial Magistrate had rejected the application.

4. Heard the learned counsel appearing for the petitioner as well

as the learned Additional Public Prosecutor for the respondent. In this regard, the learned counsel for the petitioner would rely upon the decision of the Hon'ble Supreme Court in 2003 (1) CTC 175 in the matter of *Sunderbhai Ambalal Desai vs State of Gujarat* wherein the learned counsel has relied upon the following paragraphs:-

"Vehicles

15.Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16.However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

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.

18.In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take

possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

5. Learned counsel for the petitioner also relied upon another judgment of this Court in Crl.R.C.(MD) No.773 of 2016 dated 03.02.2017 in the matter of *Ravichandran vs State represented by the Inspector of Police, Vallioor Police Station*. By relying upon the above two judgments, learned counsel appearing for the petitioner would submit that keeping the vehicle for a longer period either in the police station or in the campus of the Court in an open ground by exposing it in the sun light and rain, would definitely diminish the value of the vehicle and if it is kept idle for a longer period, certainly the motor vehicle and its parts would get rusted. Therefore, considering these situations, the guidelines, laid down by the Hon'ble Supreme Court, extracted supra, 2003 (1) CTC 175, can be applied to the present case.

6. Based on the vehicle's capacity and conditions provided by the owner/petitioner concerned, the same can be released on suitable

conditions imposed by the Court. Learned Public Prosecutor stated that there is no dispute as to the legal proposition enunciated in the said cases cited supra. With the releasing of the vehicle to the petitioner, it shall not entitle him to do the same offence by using the vehicle and at the same time he agreed on verifying the records that no other offences on the part of the petitioner is noticed by the prosecution.

7.I have considered the submissions made on both sides.

8. Learned counsel appearing for the petitioner has produced a photo copy of the RC book, according to which the vehicle stands in the name of the petitioner from 23.11.2015 onwards. The learned counsel would further submit that the original RC Book is with the bank officials as the petitioner has availed loan against the original RC book and therefore a photo copy of the same is being produced.

9. As submitted by the learned counsel for the petitioner, following yet another decision of this Court in the case of **Sundaram Finance Ltd vs The State of Tamil Nadu** in Crl.O.P.No.5278 of 2007 DATED: 09.07.2010, and the guidelines stated therein and also considering the fact that the vehicle has been seized on 16.06.2017

and it has been kept idle in an open ground and if the vehicle is continued to be kept at the same place for a longer period, certainly there are chances for the vehicle to get rusted and thereby the vehicle will lose its plyable condition and its value would considerably diminished, this court is of the view that instead of keeping the vehicle idle, if the same is returned to the owner of a vehicle with certain conditions imposed by this Court, that would not in any way prejudice the prosecution side. Hence considering the aforesaid points, this Court issues the following order:

1. Vehicle in question (i.e) container lorry with Reg No. TN 23 F 0997 shall be released to the petitioner on condition that the petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) in the credit of Crime.No.233 of 2017 on the file of the respondent police and on making the said payment, the concerned Magistrate shall release the vehicle to the petitioner.
2. 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.
3. 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.

4. Further, the petitioner is directed to produce the vehicle as and when required by the respondent Police atleast once in two months till the completion of the Trial.

10. With these conditions, the vehicle in question can be released to the petitioner by the Court below, on satisfying the conditions imposed.

Accordingly, the Criminal Revision case is disposed of.

08.08.2017

sts

Speaking order/non-speaking order

Index : Yes/no

Internet : Yes/no

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Note: Issue copy on **16.08.2017**

WEB COPY

R.SURESH KUMAR, J

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To:

1. The Presiding Officer,
Additional District Munsif
cum Judicial Magistrate,
Ambur,Vellore District.
2. The Sub Inspector of Police,
Ambur Taluk Police Station,
Vellore District.
3. The Public Prosecutor,
High Court, Madras.

**Crl.R.C.No.999 of 2017****WEB COPY**

04.08.2017