



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE **B.GOKULDAS**

Crl.R.C.(MD).No.102 of 2017

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M.Deepak Dayalan

.. Petitioner/Petitioner/Third party

Vs.

The State through
The Inspector of Police,
South Police Station,
Tuticorin.

In Crime No.1193/ 2016

.. Respondent/Respondent/Complainant

Prayer:- Criminal Revision petition is filed under Section 397 r/w 401 Cr.P.C. to call for records pertaining to the order of dismissal in Crl.M.P.No.5762/2016 on the file of the Judicial Magistrate NO.I, Tuticorin, dated 05.12.2016 and set aside the same.

For Petitioner :Mr.B.N.Raja Mohamed

For Respondent :Mrs.S.Prabha (Crl.Side)
Government Advocate

ORDER

The Criminal Revision case is filed to call for records pertaining to the order of dismissal in Crl.M.P.No.5762/2016 on the file of the Judicial Magistrate No.I, Tuticorin, dated 05.12.2016 and set aside the same.

2. Learned counsel on either side present and heard.

3. The petitioner is the owner of the vehicle namely Maruti Swift Dzire -ZDI (Diesel - GL Grey) Car bearing registration No. TN69-AM 6428. The engine number of the car is D13A-2517245 and the chasis number is MA3FJEB1S00674869. The said vehicle is hypothecated to HDFC Bank limited, Madurai and the installment ends on 05.01.2020. When the matter stood thus, the respondent police registered a case in Crime No.1193 of 2016 against one T.Michael Stanis Prabhu (A-1), Kali(A-2) and 6 others in Cr.No.1193 of 2016 for the alleged offences under Sections 147, 148, 294(b), 323, 307, 506(ii) IPC. The FIR has indentity of a car used for commission of the offence as "Grey Colour Car"and seized the above said car of the petitioner as one said to have been involved in the case. Therefore, the petitioner being the third party to the case and also owner of the vehicle, filed a petition under Section 451 Cr.P.C. seeking direction to return the vehicle



to him for interim custody. The Trial Court vide order dated 05.12.2016, dismissed the petition. Aggrieved against the said order, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the respondent police seized the vehicle without any basis and the identity of the vehicle of the petitioner is not in conformity with the averments made in the FIR. The learned counsel for the petitioner further submitted that the learned Trial Judge ought to have returned the vehicle to the petitioner on terms and conditions to furnish appropriate sureties in the light of the conditions enumerated by the Hon'ble Apex Court in more than one decisions. Hence he prayed to allow this revision.

5. Learned Government Advocate (Criminal Side) submitted that the prime accused in this case are absconding and the investigation is pending. Hence, she prayed to dismiss the revision by confirming the order passed by the Trial Court.

6. This Court, after considering the rival submissions, facts and circumstances of the case and upon perusal of the typed-set of documents, is of the view that the prayer sought for by the petitioner is to be granted.

7. The Honourable Supreme Court of India, in the decision reported in **2002(10) SCC 283 (Sunderbhai Ambalal Desai v. State of Gujarat with C.M.Mudaliar vs. State of Gujarat)**, has considered the scope of Section 451 of the Code of Criminal Procedure, especially with regard to the return of valuable articles and currency notes and it is useful to extract the relevant portion, which reads thus:

"Valuable articles and currency notes

Valuable articles such as golden or silver ornaments or articles studded with precious stones, need not be kept in police custody for years till trial is over. The Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest. For this purpose, 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

inventory of such articles;

(2) taking photographs of such



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articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

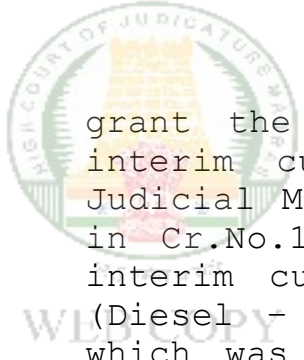
For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are 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 CrPC to impose any other appropriate condition.

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstance the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed."

8. Further, this Court in a case of similar nature, in CrI.RC. (MD).No.563 of 2015, dated 09.12.2015, ordered return of vehicle to the petitioner therein subject to certain conditions.

<https://hcservices.ecourts.gov.in/hcservices/>

9. Considering the facts and circumstances of the case and also following the above said decisions, this Court is inclined to



grant the relief of return of vehicle to the petitioner as interim custody and hence, the order passed by the learned Judicial Magistrate No.I, Thoothukudi, in CrI.M.P.No.5762 of 2016 in Cr.No.1193 of 2016, dated 05.12.2016, is set aside and the interim custody of the vehicle namely Maruti Swift Dzire -ZDI (Diesel - GL Grey) Car bearing registration No. TN69-AM 6428-, which was seized by the respondent police in Crime No.1193 of 2016, is directed to be given to the petitioner on the following conditions:-

1) The petitioner shall produce proof of ownership of the vehicle.

2) The Petitioner shall execute a bond to the value of the vehicle with two sureties to the satisfaction of the learned Judicial Magistrate No.I, Thoothukudi.

3) The petitioner shall surrender the R.C. Book and the learned Judicial Magistrate No.I, Thoothukudi, is at liberty to return the R.C.Book for renewal of the registration or for insuring the vehicle. The R.C.Book can be obtained from the Court by filing a petition and after accomplishment of the purpose, the same should be returned to the Court; and

4) The petitioner shall also file an affidavit of undertaking to the effect that-

i) he will not alienate the vehicle without obtaining an order from the learned Judicial Magistrate No.I, Thoothukudi.

ii) he will produce the same vehicle before the Court as and when summoned to produce the same; and

iii) no major alteration excepting the necessary repairs to make the vehicle road worthy shall be made.

5) The petitioner shall also give an undertaking to produce the vehicle as and when required by the District Collector/Prohibition Officer in-charge of the District or Officer authorized in that behalf by the Government.

The criminal revision is ordered accordingly.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Thoothukudi.

2.The Inspector of Police,
South Police Station,
Tuticorin.

Jikr