



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.08.2017

(Orders Reserved on 29.06.2017)

CORAM:

THE HONOURABLE MR. JUSTICE A.M. BASHEER AHAMED
Cr1.RC(MD) No.178 of 2017

WEB COPY

P.Vellappan : Petitioner / Petitioner

Vs.

State through represented by
The Sub Inspector of Police,
Andipatti Police Station,
Theni District.

: Respondent / Respondent

PRAYER: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the entire records pertaining to the order dated 02.02.2017 in Cr.M.P.No.739 of 2017 by the learned District Munsif and Judicial Magistrate, Andipatti and set aside the same by allowed this Revision.

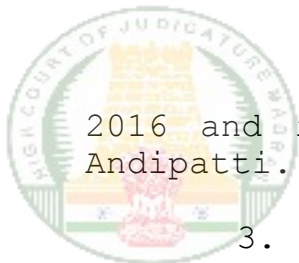
For Petitioner : Mr.M.Kannan

For Respondent : Mr.C.Mayilvahan Rajendran
Additional Public Prosecutor

ORDER

This Criminal Revision Petition has been filed praying to set aside the order, dated 02.02.2017, passed in Cr.M.P.No.739 of 2017, by the learned District Munsif-cum-Judicial Magistrate, Andipatti.

2. Admittedly, an FIR has been registered in Crime No.1576 of 2016, dated 23.12.2016, under Section 379 of IPC., by the Thilagar Thidal Police Station, Madurai City, on the basis of the written complaint, dated 19.11.2016, given by the petitioner herein in respect of his stolen vehicle viz., Honda Shine Two Wheeler, bearing Registration No. TN-64-C-0696, which was parked on 14.11.2016 at 10.00 p.m., in front of his house. The said two wheeler along with Indane Gas Cylinders were seized by the respondent Police in Crime No.704 of 2016 under Section 380 IPC., dated 25.12.2016, on the basis of the written complaint given by one Anandan S/o.Mallaiah Gounder, Balaji Nagar, Andipatti in respect of his two Indane Gas Cylinders. It is also not denied that the vehilce viz., Honda Shine, bearing Registration No. TN-64-C-0696 has been remanded in Crime No.704 of 2016, which was said to be seized, as per the confession statement of one Vignesh Kumar that the accused had borrowed the two wheeler viz., Honda Shine, bearing Registration No. TN-64-C-0696 from his friend viz., Suriya and he has stolen the Gas Cylinders of the defacto complainant in the said case. Hence, it is categorically admitted by the respondent in his counter statement that the seized vehicle was remanded in Crime No.704 of



2016 and is in the custody of the Judicial Magistrate Court, Andipatti.

3. Both the FIRs mentioned in Crime No.1576 of 2016, dated 23.12.2016 of Thilagar Thidal Police Station and in Crime No.704 of 2016, dated 25.12.2016 respectively of the respondent Police have been registered against the unnamed accused in respect of the stolen properties. The respondent has not made it clear whether the petitioner is arrayed as accused in Crime No.704 of 2016, since it is stated that the said two wheeler and Indane Gas Cylinders were seized by the respondent in this case from one Vignesh Kumar on his voluntary statement. The said confession statement of Vignesh Kumar and the seizure memo, dated 25.12.2016, are not produced before this Court, since the respondent has averred in the counter statement that the friend of the Vignesh Kumar is Suriya and he is the owner of the vehicle, based on confession of Vignesh Kumar.

4. The learned District Munsif-cum-Magistrate, Andipatti had stated in his impugned dismissal order, dated 02.02.2017 in Cr.M.P.No.739 of 2017 filed by this petitioner that this petitioner / accused had given confession statement in which he has stated that one Raju of Sellur is the owner of the vehicle. The above alleged confession statement of the petitioner is also not produced. The said Raju of Sellur mentioned in the impugned order or the said Suriya mentioned in the counter statement of the respondent have not claimed any ownerships in respect of the vehicle seized in this case. Hence, there is no rival claim against the vehicle seized in this case. However, the claim of ownership in respect of the seized and remanded vehicle viz., Honda Shine, bearing Registration No. TN-64-C-0696 is based on producing the copy of the Registration Certificate and also the Insurance Policy by the petitioner herein. The respondent has not produced any materials in contra. Hence, the petitioner is entitled to the relief of interim custody of the vehicle viz., Honda Shine, bearing Registration No. TN-64-C-0696, as per the law laid down by the Hon'ble Apex Court in **Sundarbhai Ambalal Desai Vs. State of Gujarat** reported in (2003 (1) CTC 175).

5. In the result, the Criminal Revision Petition is allowed by setting aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Andipatti, dated 02.02.2017 in Cr.M.P.No.739 of 2017 and the interim custody of the vehicle is ordered on the following conditions:-

(i). The learned District Munsif-cum-Judicial Magistrate, Andipatti is directed to give interim custody of the vehicle viz., the Honda Shine, bearing Registration No. TN-64-C-0696, to the petitioner on his execution of a bond for Rs.1,00,000/- to the satisfaction of the learned Magistrate.

(ii). Panchanama is to be executed by the petitioner in the presence of the respondent in respect of the said vehicle.



(iii). Sufficient photographs in different angle is to be taken, at the cost of the petitioner herein and to be kept in the case records.

(iv) Authenticated / Attested copy of the Registration Certificate of the vehicle or production of the Registration Certificate by the petitioner is to be obtained and kept in the records.

(v) The petitioner shall not make any kind of encumbrance and also shall not make any alteration or changes in nature of the vehicle in question, during the period of interim custody.

(vi) The petitioner is directed to produce the vehicle viz., the Honda Shine, bearing Registration No. TN-64-C-0696 whenever the trial Court is ordered.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The District Munsif and Judicial Magistrate,
Andipatti
- 2.The Sub-Inspector of Police,
Andipatti Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1cc to Mr.M.KANNAN Advocate in SR. No.74444

MPK

JS/GT/SAR.1/7.9.2017/3P-6C

Order made in
Crl.RC(MD)No.178 of 2017
Dated:-**24.08.2017**