



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2017

(Orders Reserved on 25.04.2017)

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CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.308 of 2017

Chinnathambi : Petitioner / Petitioner / A6
Vs.

The State Rep.by
The Inspector of Police,
Taluk Police Station,
Dindigul, Dindigul District.
(Crime No.609 of 2008)

: Respondent / Respondent /
Complainant

PRAYER: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in connection with the order passed by the learned Judicial Magistrate No.1, Dindigul in Cr.M.P.No.2823 of 2016 in P.R.C.No.7 of 2017, dated 02.11.2016 and set aside the same and consequently, permit the petitioner to sell his vehicle "Bolero Jeep", bearing Registration No.TN-57-AL-6690 in connection with the case in Crime No.467 of 2015, on the file of the respondent.

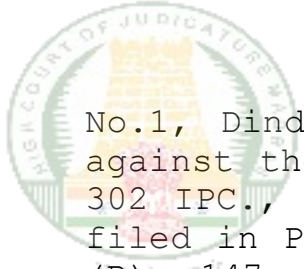
For Petitioner : Mr.N.Sathish Babu

For Respondent : Mr.A.Ramar
Additional Public Prosecutor

ORDER

This Criminal Revision Petition has been filed praying to call for the records in connection with the order passed by the learned Judicial Magistrate No.1, Dindigul in Cr.M.P.No.2823 of 2016 in P.R.C.No.7 of 2017, dated 02.11.2016 and set aside the same and consequently, permit the petitioner to sell his vehicle viz., "Bolero Jeep", bearing Registration No.TN-57-AL-6690 in connection with a case in Crime No.467 of 2015, on the file of the respondent.

2. The Revision Petitioner herein is arrayed as A6 in Crime No.467 of 2015, on the file of the respondent, pending as P.R.C.No.7 of 2016, on the file of the learned Judicial Magistrate



No.1, Dindigul. The FIR in Crime No.467 of 2015 was registered against the petitioner and others for the offences under Sections 302 IPC., based on the written complaint and charge has also been filed in P.R.C.No. 7 of 2016, for the offences under Sections 120 (B), 147, 148, 341, 302 r/w 149 and 212 of IPC., against seven accused, including the revision petitioner herein. The vehicle viz., "Bolero Jeep" (White Colour), bearing Registration No.TN-57-AL-6690, which was involved in the offence of murder case, was seized and produced before the learned Judicial Magistrate No.1, Dindigul in P.R.C.No.42 of 2015 on 14.05.2015. The Revision Petitioner has filed a petition in Cr.M.P.No.3256 of 2016, under Section 451 of Cr.P.C., claiming ownership upon the above said seized vehicle and for return of the vehicle, as interim custody, during the pendency of P.R.C.No.7 of 2016, on the file of the learned Judicial Magistrate No.1, Dindigul and the same was ordered for interim custody in favour of the revision petitioner with a condition that to produce the original R.C.Book and also with an undertaking that not to sell the vehicle in question. Pursuant to the order of the said Court, the Revision petitioner got back the vehicle to his custody.

3. The Revision Petitioner filed a petition under Section 451 of Cr.P.C., in Crl.M.P.No.2823 of 2016, seeking permission to sell his vehicle viz., "Bolero Jeep", (white colour) bearing Registration No.TN-57-AL-6690 and also to get back the original R.C.Book of the said vehicle. Having heard the petitioner and the respondent, the learned Judicial Magistrate No.1, Dindigul, vide its order, dated 02.11.2016, dismissed the petition. Aggrieved by the said order of dismissal, the present Revision is preferred before this Court, for the aforesaid relief. The respondent filed a written objection in this petition.

4. The learned counsel appearing for the revision petitioner would submit that the petitioner is the absolute owner of the vehicle and if he is allowed to sell the vehicle, he can get a price and if not till the end of the trial, the same would get very lower price, which would cause great hardship to the petitioner. The learned counsel, in support of his contention, has relied on a decision of this Court in **Sundaram Finance Ltd., rep.by its Manager (Legal) Vs. State of Tamil Nadu Rep.By the Inspector of Police, Kaveripattinam Police Station, Krishnagiri Taluk and Another** reported in [2011 (1) M.W.N (Cr.) 437] .

5. Perused the materials on record. Heard and considered the rival submissions advanced by either side.

6. Admittedly, the seized vehicle viz., "Bolero Jeep", bearing Registration No.TN-57-AL-6690 was given to the petitioner, as interim custody, by the learned Judicial Magistrate No.1, Dindigul, which belongs to the revision petitioner absolutely.



According to the respondent, the said vehicle was used for commission of the offence by the accused in this case. On perusal of the impugned order of dismissal would reveal that the petitioner is one of the accused and the vehicle in question was used for the commission of offence, as contended by the respondent and the case is exclusively triable by the Court of Sessions and the final order for the seized vehicle is to be passed by the concerned Court of Sessions at the conclusion of the trial and the committal Court cannot change the order of the Court with condition for interim custody given to the petitioner. The Court exercising the powers regarding the custody and disposal of the property pending trial case under Section 451 of Cr.P.C., can pass appropriate orders with regard to such property like, (a) order for proper custody of the property pending conclusion of enquiry or trial; (b) order to sell or otherwise dispose of after recording such evidence, as if it thinks necessary; (c) If the property is subject to speedy natural decay, in order to dispose of the same, the said power so vested should be exercised expeditiously and judicially, as per the dictum laid down by the Hon'ble Apex Court in the Judgment in **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in (2003 (1) CTC 175). The learned counsel has also relied on a decision of this Court in **Arun @ Arunprasad Vs. State** reported in (2007 (2) MLJ (Cr1). 315) wherein it has been stated that the Judicial Magistrate can invoke the powers of the custody and dispose of the property involved in a case exclusively triable by a Court of Sessions.

7. The order made in Cr.M.P.No.3256 of 2015 is not a final order and it is only an order for interim custody and such interim order is free to modify at any stage for the reasons to be recorded, as per the order passed by this Court in an unreported Judgement in **Cr.R.C. (MD) No.198 of 2015**, dated 01.06.2015 in **D.Valluvan Vs. Sub-Inspector of Police, Narikudi Police Station**, (Crime No.54 of 2014).

8. The case property in this case is, "Bolero Jeep", which is an automobile consisting of mechanical and rubber parts which by their nature subject to natural decay. Section 451 of Cr.P.C., confers discretionary powers on the Court to grant permission to sell. Return of vehicle / sale of vehicle pending disposal of the criminal case is permissible under Section 451 of Cr.P.C. The decision of this Court reported in **[2011 (1) M.W.N (Cr.) 437]** (cited supra) relied on by the counsel for the petitioner before this Court as well as before the Court below is squarely applicable to the case on hand, in the considered opinion of this Court. Therefore, this Court is inclined to interfere with the order passed by the Court below.

9. In the result, this Criminal Revision Petition is allowed and the order passed by the learned Judicial Magistrate No.1, Dindigul in Cr.M.P.No.2823 of 2016 in P.R.C.No.7 of 2017,



dated 02.11.2016 is set aside. Consequently, the petitioner is permitted to sell his vehicle viz., "Bolero Jeep", bearing Registration No.TN-57-AL-6690 in connection with the case in Crime No.467 of 2015, on the file of the respondent, on the following conditions:-

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(i). The lower Court shall upon production of the certified copy of this order fix a date for production of vehicle before it.

(ii). Upon production, the learned Judicial Magistrate No.1, Dindigul, shall cause Photo of the vehicle to be taken on several angles, at the cost of Revision Petitioner and record Panchanama thereof, which shall be read as evidence in lieu of marking of the vehicle.

(iii). The petitioner is at liberty to effect sale of vehicle.

(iv). The sale proceeds of the vehicle shall be deposited with the learned Judicial Magistrate No.1, Dindigul / Trial Court, which is directed to deposit the same in a Fixed Deposit, in any one of the Nationalized Bank, and release to such party, as the trial Court may deem appropriate upon the conclusion of the trial.

(v). The documents of sale shall incorporate the fact that the vehicle is a case property and is required to be produced before the trial Court, as and when so directed, by filing an undertaking.

(vi). The transfer of ownership shall be subject to such orders that the trial Court or any other Court may pass on conclusion of trial.

(vii). The petitioner is entitled to get back RC Book from the Court, on filing of an affidavit.

Sd/-

Assistant Registrar(CS-I)

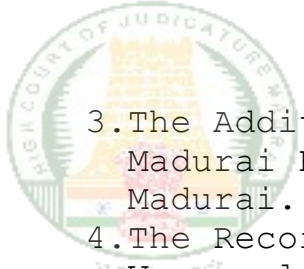
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Sub Assistant Registrar

To

1.The Judicial Magistrate No.1,
Dindigul.

<https://hccs.courtservice.org/> of Police,
Taluk Police Station,
Dindigul, Dindigul 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.N.SATHISH BABU Advocate in SR. No. 78955

MPK

JS/SKN.RSK/SAR.1/26.09.2017/ 4P-6C

Order made in

Cr1.RC(MD)No.308 of 2017

Dated:- **15.09.2017**