



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.315 of 2017

[Orders Reserved on 21.06.2017]

—
Dhilipkumar

: Petitioner

Vs.

State rep. by
The Inspector of Police,
SIPCOT Police Station,
Sivagangai District
(Cr.No.202/2016)

: Respondent

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order passed in Cr.M.P.No.513 of 2017 by the learned Judicial Magistrate, Manamadurai, dated 16.02.2017 and give interim custody of the vehicle bearing No.TN-57-M-9037 along with the trailer bearing No.TN-60-H-5260 to the petitioner.

For Petitioner : Mr.A.K.Manickam

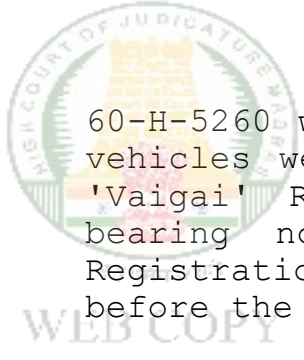
For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor.

O R D E R

This Criminal Revision Case has been filed praying to set aside the order passed in Cr.M.P.No.513 of 2017 by the learned Judicial Magistrate, Manamadurai, dated 16.02.2017 and give interim custody of the vehicle bearing No.TN-57-M-9037 along with the trailer bearing No.TN-60-H-5260 to the petitioner.

2. The matter is taken up for final disposal at the admission stage itself with the consent of the learned counsels appearing for the respective parties.

3. A case has been registered in Crime No.202 of 2016 on 06.11.2016, for the offence punishable under Section 3 of Tamil Nadu Public Properties (Prevention of Damage & Loss) Act, 1992 and Section 21(1) of Mines and Minerals Development and Regulation Act, 1957 against 5 named accused by the respondent Police. The complainant in this case is the Inspector of Police, SIPCOT Police Station. As per the confession of A1 / Anandakrishnan, the vehicle bearing Registration No.TN-60-H-5260 along with a trailer without any registration number and another tractor without any registration number along with a trailer bearing Registration No.TN-



60-H-5260 were seized on the date of alleged occurrence. The said vehicles were said to have been used in quarrying river sand from 'Vaigai' River, by the accused illegally. The seized Tractor bearing no registration number along with a trailer bearing Registration No. TN-60-H-5260 were remanded under P.R.No.3 of 2017, before the learned Judicial Magistrate, Manamadurai.

4. The petitioner mentioning himself as 3rd party filed Crl.M.P.No.513 of 2017 before the learned Additional District Munsif-cum-Judicial Magistrate, Manamadurai, seeking interim custody of the vehicle viz., the tractor (blue colour), bearing Registration No. TN-57-M-9037 to the petitioner alleging that he is the owner of the said trailer and tractor. It is submitted that the seized and remanded tractor does not have any registration number. Since the petitioner did not file any ownership of document of the said trailer and the tractor or R.C.Book relating to the said vehicle, the learned Magistrate dismissed the said petition vide his order dated 16.02.2017. Aggrieved by that order of dismissal, the present Revision Petition is filed for the aforesaid relief.

5. The learned counsel appearing for the petitioner would submit that the petitioner is the owner of the vehicle and all the documents and records in respect of the vehicle stand in the name of the petitioner; that the original R.C.Book and the Insurance Certificate of the Tractor bearing Registration No.TN-57-9037 (blue colour) are with the financier, who gave no objection to hand over the custody of the vehicle to the petitioner and without verifying the Engine Number and Chassis Number, which are available, the order of dismissal passed without application of mind and keeping the said tractor in an open place without any safeguard under the custody of the respondent would lead to irreparable damage to various parts of the vehicle and if the vehicle is exposed to sunlight and rain and the same is kept ideal for some more days, the vehicle become useless and the Court below has failed to appreciate the principles laid down by the Hon'ble Apex Court and the High Courts in a catena of decisions, regarding the disposal of the properties / articles and the vehicle kept in Court custody pending trial and hence, the order of dismissal by the Court below is not sustainable either on law or on facts and the same is liable to be set aside.

6. The learned Additional Public Prosecutor appearing for the respondent based on the counter statement would submit that the Registration Number mentioned in the RC Book produced by the petitioner is not that of the vehicle in issue and the petitioner failed to prove his ownership over the vehicle in issue before the Court below and also failed to establish the connection between No Objection Letter issued by the financier and the vehicle in issue and since the petitioner is not the owner of the vehicle in issue, the Court below is not legally bound to release the vehicle in issue to the petitioner and hence, prayed for dismissal of the Revision

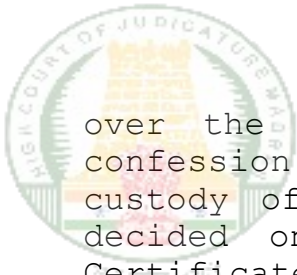


7. Perused the materials available on record. Heard and considered the rival submissions made on either side.

8. Admittedly one tractor with no Registration Number along with a trailer bearing Registration No.TN-60-H-5260 was seized in the occurrence place and was remanded in P.R.No.3 of 2017 in Crime No.202 of 2016, pending on the file of the learned Additional District Munsif-cum- Judicial Magistrate, Manamadurai, and the investigation is pending. On perusal of FIR registered in this case, the petitioner herein is shown as 4th accused, out of 5 named accused. But, the Revision Petitioner himself is arrayed as 3rd party in the impugned order. At the time of hearing of this Revision, the learned counsel appearing for the Revision Petitioner made an endorsement to the effect that the petitioner is not pressing in respect of return of the trailer, bearing Registration No.TN-60-H-5260 with liberty to approach the trial Court with relevant records and the same is recorded. Hence, the dispute in this Revision is confined to return of the Tractor having no registration number, which was remanded in P.R.No.3 of 2017. The revision petitioner has filed the xerox copy of the form of certificate of registration in respect of tractor (blue colour) having Registration No.TN-57-M-9037 in the name of one Eswaramurthy S/o.Thangavel, dated 29.09.2008 and lastly transferred the ownership of the said tractor to Dilipkumar S/o. Chinnathambi (petitioner herein) Old No.94, New No.812, Kalkurichi, Manamadurai, as per the endorsement of the Assistant Registering Authority, Sivagangai, dated 08.12.2016 found in the Certificate of Registration and also the copy of the Insurance Policy for the period from 00.00 Hrs on 29.11.2016 to midnight on 29.11.2017 issued in the name of one Nagalakshmi for the vehicle bearing Registration No.TN-57-M-9037. The said Nagalakshmi was shown as the first transferee and from whom it was transferred to the petitioner herein, as per the endorsement found in the Certificate Registration.

9. It was also found that the said vehicle was under hypothecation to KOTAK Mahindra Bank Ltd., 1054/33 Avinasi Road, Coimbatore - 641 018, by the first owner of the vehicle. There is endorsement of the cancellation of the hypothecation found in the Certificate of Registration Form. The Revision Petitioner has produced the copy of No Objection Certificate issued by the partner of Tharani Motors, Cumbum, dated 03.01.2017 in which it is stated that the financial assistance was given to the petitioner in respect of Swaraj Tractor bearing Registration No.TN-57-M-9037 and the original R.C.Book and the Insurance Certificate of the petitioner are in possession of the said finance and the said finance has no objection to hand over the vehicle to the petitioner herein. There is no rival claim in respect of the vehicle in issue before the Court below, except the petitioner herein.

10. Admittedly, the vehicle in issue was not seized from the possession of the petitioner herein. The Court decides merely about the custody of such property and not decide the question of rights



over the property. Though the vehicle was seized as per the confession of A1 / Anandakrishnan, the said A1 did not claim the custody of the vehicle. Legal custody of the vehicle is to be decided on the basis of the records like R.C.Book, Insurance Certificate and other documents.

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11. In this case on hand, the petitioner claims the legal custody by way of ownership on the basis of form of certificate of registration and Insurance Certificate Originals which are in possession of Tharani Motors, who gave 'No Objection Certificate' dated 03.01.2017 to the petitioner for custody. In view of the principles laid down by the Hon'ble Apex Court in the Judgment in **Sunderbhai Ambalal Desai Vs. State Of Gujarat** reported in **(2002 Supp (3) SCR 39)** for return or disposal of the property during any enquiry or inquiry or trial. The Court below is bound to record the evidence, if necessary. The financier as alleged by the petitioner is not a party to the impugned proceedings initiated by the petitioner herein. However, the petitioner lays his claim over the seized and remanded tractor in issue on the basis of the certificate of registration and insurance certificate of the tractor bearing Registration No. TN-57-M-9037. The originals of which are in possession of financier / Tharani Motors. The Court below is empowered to issue summons to the concerned financier for production of R.C.Book and Insurance Certificate of the vehicle in issue for granting interim custody of the vehicle having no Registration Number by verification of engine number, chassis number and other details etc., found in the said Registration Certificate. In the above stated circumstances, this Court is inclined to set aside the impugned order, dated 16.02.2017 passed in Cr.M.P.No.513 of 2017 by the learned Judicial Magistrate, Manamadurai.

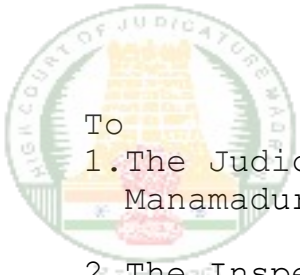
12. In the result, this Criminal Revision stands allowed and the impugned order passed in Cr.M.P.No.513 of 2017 by the learned Judicial Magistrate, Manamadurai, dated 16.02.2017, is set aside by directing the learned Magistrate to decide the claim of interim custody of the petitioner afresh by considering the original Registration Certificate of the tractor bearing Registration No.TN-57-M-9037 with reference to the engine number, chassis number and other details of the seized / remanded tractor in issue, after giving opportunity to both parties by issuing summons to the financier / Tharani Motors, Cumbum, for production of the original R.C.Book and Insurance Certificate and examine the financier, if necessary.

Sd/-

Assistant Registrar(A.E)

/True Copy/

Sub Assistant Registrar



To

1. The Judicial Magistrate,
Manamadurai.

2. The Inspector of Police,
SIPCOT Police Station,
Sivagangai 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 M/s.A.K.MANICKAM Advocate in SR. No. 81691

MPK

JS/SKN/SAR.2/26.10.2017/5P-6C

Pre-Delivery Orders made in

Crl.RC(MD)No.315 of 2017

Dated:- 05.10.2017