



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2017

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CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.425 of 2017

[Orders Reserved on 13.06.2017]

C.Ravikumar : Petitioner / Petitioner

Vs.

1.Gokulnath

2.State through

The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District

In Crime No.32 of 2012 : Respondents / Respondents

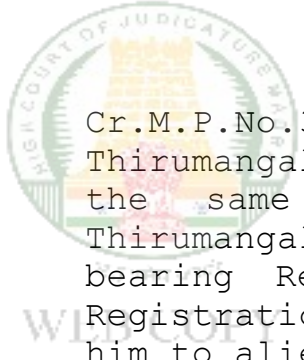
Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to the orders passed in Cr.M.P.No.3917 of 2016, dated 09.09.2016 on the file of the learned Judicial Magistrate, Thirumangalam and set aside the same and consequently, directing the learned Judicial Magistrate, Thirumangalam, to deliver the vehicle Toyota Innova Car, bearing Registration No.TN-09-AS-0670 along with its Original Registration Certificate Book to the petitioner so as to enable him to alienate the vehicle.

For Petitioner : Mr.N.Anantha Padmanabhan
For Mr.G.Rajaraman

For Respondent-2 : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

For Respondent-1 : Mr.L.Prabhu

O R D E R



Cr.M.P.No.3917 of 2016, by the learned Judicial Magistrate, Thirumangalam, praying to call for the records and to set aside the same and directing the learned Judicial Magistrate, Thirumangalam, to deliver the vehicle viz., Toyota Innova Car, bearing Registration No.TN-09-AS-0670 along with its Original Registration Certificate Book to the petitioner so as to enable him to alienate the vehicle.

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

3. Perused the materials available on record. Heard and considered the rival submissions made by either parties.

4. Admittedly, the vehicle viz., Toyota Innova Car, bearing Registration No.TN-09-AS-0670 was given to the petitioner, by the learned Judicial Magistrate, Thirumangalam, on certain conditions, including deposit of the original R.C.Book of the vehicle to the Court, as per the order in Cr.M.P.No.2462 of 2013, dated 15.07.2013. One of the condition directing the petitioner to produce the vehicle before the Court on the first working day of every English Calender month was also modified by the learned Judicial Magistrate, Thirumangalam in Cr.M.P.No.3741 of 2014 on 16.09.2014 to the effect that the petitioner shall produce the vehicle before the Court once in three months viz., first working day of every English Calender months ie., January, April, July and October. The first respondent has not chosen to file any Revision or any further proceedings against the dismissal of his application in Cr.M.P.No.3863 of 2013 in which he sought interim custody of the said vehicle, as financier, from whom the said vehicle was purchased on hypothecation by the petitioner. The said dismissal order was passed on the same day ie., 15.07.2013. It is further admitted that the said vehicle is now in the custody of the petitioner in view of the orders passed in Cr.M.P.No.2462 of 2013, dated 15.07.2013.

5. It is not denied by the first respondent herein that he has issued 'No Objection Certificate', dated 27.07.2016, to cancel the hypothecation endorsement made in the R.C.Book of the said vehicle and accordingly, the hypothecation endorsement was cancelled from 05.08.2016 by the registering authority, subsequent to the order of interim custody, while the original R.C.Book is in the custody of the Court. Hence, the petitioner filed Cr.M.P.No.3917 of 2016, before the learned learned Judicial Magistrate, Thirumangalam, seeking an order to return his R.C.Book of the vehicle in question, for cancelling the endorsement of the hypothecation found in the original R.C.Book and also the custody of the vehicle permanently, since the hypothecation was discharged by the first respondent. The petitioner has not chosen to allege in the said petition seeking permission of the Court to sell the



vehicle given as interim custody to the petitioner. Now only the revision petitioner is seeking such relief in the Revision Petition.

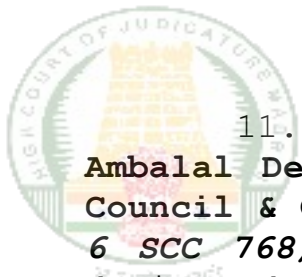
6. On hearing of this Revision, the learned Additional Public Prosecutor appearing for the second respondent and also the learned counsel appearing for the first respondent / financier would submit that they have no objection to return the original Registration Certificate Book to the petitioner by the concerned Court.

7. Robbery of the said vehicle at the knife point from one S.Pandi, driver of the petitioner, by one named accused and two others was registered as FIR No.32 of 2012 on 15.01.2012, as per the order of the learned Judicial Magistrate, Thirumangalam, under Section 156(3) of Cr.P.C. In the FIR itself, the complainant has admitted that the vehicle viz., Toyota Innova Car, bearing Registration No.TN-09-AS-0670 is belonged to the petitioner herein.

8. According to the learned Additional Public Prosecutor, the investigation was completed and charge sheet was also filed in the concerned Court, but not taken on file. It is further submitted that the complainant died on 27.05.2012 and death certificate is also produced for perusal of this Court. The copy of the 'No Objection Certificate' issued by the first respondent herein for cancellation of hypothecation endorsement and also cancellation endorsement of hypothecation from 05.08.2016 by the concerned registering authority are filed and perused.

9. The petitioner has become the absolute owner of the vehicle bearing Registration No.TN-09-AS-0670 without any encumbrance, after cancellation of the hypothecation endorsement. The petitioner is entitled to have the custody of the said vehicle permanently as absolute owner and also alienate or encumber the said vehicle without any condition. In support of the above said conditions, counsel for the petitioner relies a decision of Delhi High Court in **Manjit Singh Vs. State** made in **Crl.M.C.No.4485 of 2013 and Crl.M.A.No.16055 of 2013**, dated 10.09.2013 and also the decision of the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai Vs. State Of Gujarat** reported in (2002 Supp(3) SCR 39).

10. On perusal of the impugned order would reveal that the learned Judicial Magistrate, Thirumangalam, has dismissed the petition filed by the petitioner on the ground that the petitioner would sell the vehicle or pledge the R.C.Book, transfer the vehicle and delaying the trial of the case, if the vehicle and R.C.Book are given absolutely to the petitioner herein.



11. The Supreme Court in the Judgment in **Sunderbhai Ambalal Desai's case** (cited supra) and also in **General Insurance Council & Ors Vs. State Of Andhra Pradesh & Ors reported in (2010) 6 SCC 768**) has clearly held that the production of the vehicle during the trial is not necessary and the photographs of the vehicle would be sufficient to be proved in evidence. It is also not denied that the said vehicle was purchased in the year 2006 and the market value of the vehicle is getting down year by year and, if the petitioner is not allowed to alienate the vehicle, he will be put much loss and irreparable financial loss. Considering the above facts and circumstances of the case and also the fact that the petitioner has become the absolute owner of the vehicle, which was given to him on interim custody, this Court is inclined to allow the civil Revision Petition.

12. Accordingly, the Criminal Revision is allowed and the order passed by the learned Judicial Magistrate, Thirumangalam, on 09.09.2016 in Cr.M.P.No.3917 of 2016 is set aside, on the following terms.

i. The concerned lower Court shall upon production of the certified copy of this order, fix a date for production of the vehicle, which was given to the petitioner on interim custody, before it.

ii. Upon production, the lower Court shall cause photographs of the vehicle to be taken at the costs of the petitioner and record panchanama thereof.

(iii) The petitioner is at liberty to effect the sale of the vehicle. The photographs and the Panchanama should be read as evidence in lieu of the vehicle and the R.C.Book surrendered by the petitioner is directed to be handed over to the petitioner, after substituting with the attested xerox copy of it.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Thirumangalam.

2.-Do thro' The Chief Judicial Magistrate, Madurai.

3.The Inspector of Police,
Thirumangalam Town Police Station,



4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.G.RAJARAMAN, Advocate SR.No.81637

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MAS/SKN-RSK/SAR2:20.10.2017:5P-6C

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Dated:-
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