



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE A.M.BASHEER AHAMED

Cr1.R.C. (MD) No.805 of 2017

K.Shaik Fareed

... Petitioner

Vs.

The State Rep.
The Sub Inspector of Police,
Dindigul Town Police Station,
Dindigul.

... Respondent

PRAYER: The Petition filed under Section 397 r/w 401 of Cr.P.C. to call for the records pertaining to the order dated 22.09.2017 passed in Cr1.M.P.No.4403 of 2017 by the Judicial Magistrate No.I, Dindigul in R.P.R.No.77 of 2017 in Crime No.352 of 2017 on the file of the Sub Inspector of Police, Dindigul Taluk Police Station, Dindigul and set aside the same and consequently, direct to return the two wheeler namely, Yamaha Gladiator SS bearing registration No.TN-30 AU 2761 to the petitioner.

For Petitioner : Mr.C.Christopher

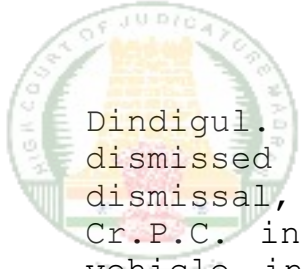
For Respondent : Mr.T.Mohan, App

ORDER

This Criminal Revision Case is filed to quash the order dated 22.09.2017 passed in Cr1.M.P.No.4403 of 2017 by the Judicial Magistrate No.I, Dindigul in R.P.N.No.77 of 2017 in Crime No.352 of 2017 on the file of the Sub Inspector of Police, Dindigul Taluk Police Station, Dindigul and consequently, direct the respondent to return the two wheeler namely, Yamaha Gladiator SS bearing registration No.TN-30 AU-2761 to the petitioner.

2.The case in Crime No.352 of 2017 has been registered on 30.07.2017 against 4 named accused including the petitioner herein for the offence under Sections 341, 294(b), 323 and 379 IPC. As per the allegations made in the FIR, the petitioner along with other accused are said to have come by 2 nos of two wheelers, intercepted one Buvaneswari and forcibly taken away her cell phone, cash of Rs.250/- and also ID card of the said Buvaneswari. The vehicle bearing registration No.TN-30 AU- 2761 was seized from the petitioner herein and the same was remanded to the learned Judicial Magistrate No.I, Dindigul in R.P.R.No.77 of 2017.

3.The petitioner herein has filed a petition in Cr1.M.P.No.44211 of 2017 under Section 451 Cr.P.C., seeking interim custody of the said vehicle before the Judicial Magistrate No.I,



Dindigul. The learned Judicial Magistrate by order dated 01.09.2017 dismissed the said application. As against the said order of dismissal, the petitioner has filed a petition under Section 451 Cr.P.C. in CrI.M.P.No.4403 of 2017 seeking interim custody of the vehicle in question before the learned Judicial Magistrate No.I, Dindigul. The learned Judicial Magistrate No.I, Dindigul, by order dated 22.09.2017 dismissed the said petition, stating that the petitioner has suppressed the dismissal of the earlier petition filed in CrI.M.P.No.4211 of 2017 and also filed the present petition after obtaining registration certificate of the said vehicle in his name. As against the order of dismissal passed by the learned Judicial Magistrate No.I, Dindigul, the present Criminal Revision Case is filed before this Court.

4.The learned counsel for the revision petitioner would contend that FIR was registered on the basis of the false allegations and the petitioner is no way connected with the said occurrence dated 30.07.2017 and the petitioner has purchased the vehicle in question from the earlier owner namely, S.Rosilin Mary in whose name the registration certificate stood and the transfer entry was only made on 01.09.2017 and at present, the petitioner becomes the real owner the vehicle in whose name the registration certificate stands. The certified copy of the registration certificate is also produced by the petitioner herein. Earlier order passed by the learned Judicial Magistrate is also produced. As per the registration certificate of the vehicle, the name transfer in the registration certificate was effected on 01.09.2017 to the petitioner's name and hence, he is the owner of the said vehicle at present.

5.The learned counsel for the revision petitioner would further contend that there is no dispute in respect of the ownership of the said vehicle and the de facto complainant has not claimed any right over the vehicle and the vehicle is still under the custody of the respondent Police for the past 3 months exposing in the sun light and also rain, without any care or maintenance and hence, the vehicle would become useless, if it allows to remain under the custody of the respondent herein.

6.This matter is taken up for further hearing at the admission stage itself with the consent of both sides.

7.The learned Additional Public Prosecutor appearing for the respondent has not chosen to file any written objection, but, he made oral submissions.

8.The reasons assigned by the court below in its order dated 22.09.2017 is against the dictum laid down by the Hon'ble Apex Court in **Ambalal Desai Vs. State of Gujarat** reported in **[2003 (1) CTC 175 (SC)]**. Admittedly, there is no rival claim in respect of the vehicle in question. The copy of the registration certificate shows that the ownership of the said vehicle stands in the name of the petitioner from his earlier owner with effect from 01.09.2017. It is not disputed by the respondent Police that the seized vehicle has

been kept idle and it is being kept in open space and ultimately it will become a scab value.

9. Considering the facts and circumstances of the case and also the guidelines laid down in the case reported in **[2003 (1) CTC 175 (SC)]**, this Court is inclined to order as under:

(i) The Criminal Revision Petition in CrI.R.C.(MD)No.805 of 2017 is allowed by setting aside the order dated 27.10.2017 passed in Cr.M.P.No.3159 of 2017 by the learned Judicial Magistrate No.II, Nagercoil.

(ii) The learned Judicial Magistrate No.II, Nagercoil will grant interim custody of the properties, namely, vehicle bearing registration No.TN 30 AU 2761 to the revision petitioner on execution of a bond for a sum of Rs.1 lakh (Rupees one lakh only) to the satisfaction of the magistrate concerned and also on production of the original R.C. book of the vehicle in dispute, in which, the ownership was transferred to the petitioner herein for the court custody.

(iii) The vehicle shall be photographed at different angle, at the cost of the revision petitioner herein and it shall be in the case records.

(iv) The Panchanama is to be prepared before handing over the vehicle in question to the revision petitioner herein.

(v) The petitioner should not alter or alienate the vehicle, till the disposal of the case.

(vi) The revision petitioner shall cause production of the said vehicle as and when required by the concerned Judicial Magistrate.

10. With the above directions, this Criminal Revision case is ordered accordingly.

Sd/-

Assistant Registrar(A.E)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Dindigul.

2. Do-Thro' The Chief Judicial Magistrate, Dindigul.

3. The Sub Inspector of Police,
Dindigul Town Police Station, Dindigul.

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

+1cc to Mr.K.APPADURAI Advocate in SR. No. 87763