



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE A.M.BASHEER AHAMED

Cr1.R.C. (MD) No.945 of 2017

Kannithai

... Petitioner

Vs.

1. The Inspector of Police,
Nazareth Police Station,
Thoothukudi District.
(Crime No.223 of 2017)

2. The Brance Manager,
Sriram Transport Finance Ltd.,
No.81, Bye pass Road,
Madurai.
Brance Office,
North main road,
No.46C/13 2nd Floor,
Valliyur,
Tirunelveli District.

... Respondents

PRAYER: The Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order passed by the learned Judicial Magistrate, Sathankulam dated 06.12.2017 in Cr1.M.P.No.9412 of 2017 and allow the petition.

For Petitioners : Mr.M.Prabu
For R1 : Mr.C.Mayilvahana Rajendren, APP

ORDER

This petition has been filed to set aside the order dated 06.12.2017 in Cr1.M.P.No.9412 of 2017 passed by the learned Judicial Magistrate, Sathankulam.

2.The learned counsel for the petitioner is present. Mr.C.Mayilvahana Rajendren, Additional Public Prosecutor takes notice for the respondent herein. This Criminal Revision case is taken up for final hearing at the admission stage itself by consent of both parties.



3.The case has been registered against three accused persons including the owner of the tipper lorry bearing Registration No. TN-75 / K-8550 and it is pending for investigation. The above said vehicle was also seized by the respondent Police and remanded to the learned Judicial Magistrate, Sathankulam in P.R.No.228 of 2017, dated 30.11.2017 and the said vehicle is now under the custody of the respondent Police.

4.The petitioner herein claims ownership for the seized vehicle and for return of the said vehicle as interim custody. the petitioner filed a petition in CrI.M.P.No.9412 of 2017 before the learned Judicial Magistrate, Sathankulam and the said petition was dismissed by the Court concerned on 06.12.2017. Aggrieved by the order of dismissal, the petitioner preferred this Criminal Revision before this Court.

5.It is admitted that the petitioner is the owner of the seized vehicle. The copy of the R.C.book is also filed and perused. As per contents in the FIR, the owner of the said vehicle is also arrayed as an accused in this case. Though, the vehicle was hypothecated to R2 herein, he submitted that he has no objection to return the vehicle to the petitioner herein. The copy of no objection certificate produced by R2 is also perused.

6.The case of the prosecution is that the vehicle in question is being used for illegal transportation of sand. There is no rival claim in respect of the seized vehicle.

7.At this juncture, this Court is constrained to incorporate the relevant guidelines and principles laid down by the Hon'ble Apex Court in the judgment in **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in (AIR 2003 SC 638) in which it has been held that,

"the powers under Section 451 of Cr.P.C., should be exercised expeditiously and judicially. It would serve various purposes viz., (i) owner of the vehicle would not suffer because of its remaining unused or by its misappropriation. (ii) Court or Police would not be required to keep the articles in safe custody. (iii) If the proper panchanama before handing over the possession of the vehicle is prepared, that can be used in evidence instead of its production before the Court during trial (iv) If necessary, evidence could also be recorded describing the nature of the property in detail and this jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

<https://hcservices.ecourts.gov.in/hcservices/> there is no use to keep the seized vehicle at the Police station for a long period. On perusal of the dismissal order passed by the Court below, there is no reason assigned to

keep the said vehicle under the said custody.

9. In the above circumstances, this Court is inclined to allow this Criminal Revision by setting aside the impugned order passed by the court below. Accordingly, the Criminal Revision case stands allowed and the impugned order, dated 06.12.2017, passed by the learned Judicial Magistrate, Sathankulam in CrI.M.P.No.9412 of 2017 is set aside by passing the following conditions:

(i) The learned counsel Judicial Magistrate is directed to hand over the seized and remanded vehicle viz., Ashok Leyland Tipper Lorry bearing Registration No. TN 75 K8550, to the petitioner, in execution of a bond for Rs.2,00,000/- by the petitioner herein.

(ii) The vehicle in question should be photographed in different angles, at the cost of the petitioner herein and kept with case records.

(iii) A detailed Panchanama should be prepared before handing over the possession of the remanded vehicle.

(iv) The authenticated copy of the original R.C.Book should be received and kept along with the bundle since the vehicle is hypothecated to the R2 herein, who is in possession of the original R.C.Book.

(v) The petitioner should not sell or alter the vehicle while in any manner, while he is in custody of the said vehicle.

(vi) The petitioner should produce the vehicle, as and when required by the said Court.

Sd/-
Assistant Registrar(CO)

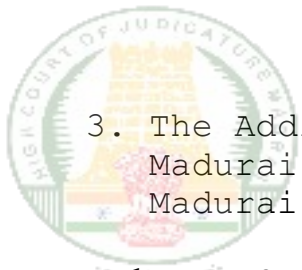
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Sub Assistant Registrar

To

1. The Judicial Magistrate,
Sathankulam.

2. The Inspector of Police,
Nazareth Police Station,
Salem District.
(Crime No.223 of 2017)



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

+1cc TO Mr.M.Prabu , Advocate in SR No. 94531

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