



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

CORAM:

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THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.773 of 2016

[Orders Reserved on 29.11.2016]

Ravichandran : Petitioner

Vs.

State Represented by,
The Inspector of Police,
Vallioor Police Station,
Tirunelveli District
(Cr.No.288 of 2016)

: Respondent

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order passed in Cr.M.P.No.5273 of 2016 on the file of the learned Judicial Magistrate, Vallioor, dated 25.10.2016 and set aside the same.

For Petitioner : Mr.T.A.Ebenezer

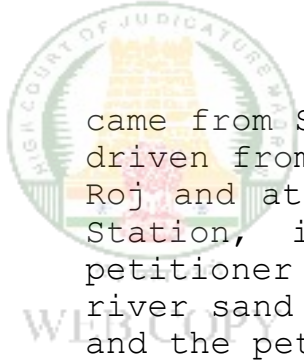
For Respondent : Mr.P.Kandasamy
Government Advocate (crl.side)

ORDER

This Criminal Revision Case is filed praying to call for the records pertaining to the order passed in Cr.M.P.No.5273 of 2016 on the file of the learned Judicial Magistrate, Vallioor, dated 25.10.2016 and set aside the same.

2. Brief facts, in nutshell, are as under :-

The case was registered in Crime No.288 of 2016 on 16.09.2016, for the offence under Section 379 of IPC., r/w Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957, against the petitioner herein and three others by the respondent Police. The FIR reveals the fact that on 16.09.2016 at about 5.00 p.m., a Tempo [TATA 407 Mini Lorry] bearing Reg.No.TN-65-E-9605,



came from South Kallikulam to Sundrapandipuram Road and the same was driven from North towards South, nearby a Rice-Mill, belonged to one Roj and at that time, the Sub-Inspector of Police, Vallioor Police Station, intercepted the above vehicle for inspection and the petitioner herein drove the said vehicle, in which 1-1/2 Unit of river sand was loaded without any permission for the purpose of sale and the petitioner herein stopped the vehicle and escaped along with two other persons leaving the vehicle and apart from that, one more accused, who followed the said Tempo, by riding a Honda Bike, bearing Reg.No.TN-74-AE-7732 also escaped from the, spot leaving the said vehicle.

3. The petitioner / accused herein filed Cr.M.P.No.5273 of 2016 under Section 451 of Cr.P.C., before the learned Judicial Magistrate, Vallioor, for return of the vehicle viz., Tempo [TATA 407 Mini Lorry] bearing Reg.No.TN-65-E-9605, as the owner of the vehicle, which has been remanded under PR No.322 of 2016 in the said crime number and the said petition was dismissed by the learned Judicial Magistrate, Vallioor, as per the order dated 25.10.2016 stating that the offence committed by the accused is a serious nature, which affects the natural environment and also against the public at large and no sufficient reasons have been given for return of the vehicle in addition to that, he has not surrendered the R.C.Book of the vehicle in question, which is mandatory while seeking return of vehicle.

4. Aggrieved by the dismissal order, the petitioner / accused filed the present Revision praying this Court to set aside the order passed in Cr.M.P.No.5273 of 2016, dated 25.10.2016 by the learned Judicial Magistrate, Valliyoer.

5. I have perused the materials on record and heard the rival submissions advanced by the learned counsel for the petitioner and the learned Government Advocate (crl.side) appearing for the respondent.

6. The revision petitioner / accused claims that he is the owner of the vehicle in question relating to P.R.No.322 of 2016 in Crime No.288 of 2016, on the file of the respondent Police. The petitioner has stated in his petition before the Court below that the original R.C.Book of the vehicle in question is in possession of 'Shriram Transport Finance Company' for the loan obtained by the revision petitioner and hence, he filed the Xerox copy of the R.C. Book, which is in the name of the revision petitioner / accused in this case.

7. Admittedly, investigation in the case is still pending and there is no rival claim in respect of the said vehicle on the date of filing / disposal of Cr.M.P.No.5273 of 2016, before the learned Judicial Magistrate, Valliyoer. It is well settled law 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) wherein, it has



been held as under:-

"In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. 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."

8. It is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court.

9. In the case on hand, the documents produced by the revision petitioner show that he is the owner of the seized vehicle and the original R.C.Book is in the hands of 'Shriram Transport Finance Company' because of the loan availed from the said Finance Company. The Revision Petitioner, who claims for return of seized vehicle, who is the accused in this case and also the owner, there is no bar in passing appropriate orders for return of said vehicle. The learned Magistrate, who passed the impugned order does not apply his mind in the averments made in the petition for return of vehicle. The reasons assigned for passing the dismissal order is not sustainable in law, in the considered opinion of this Court.

10. Considering the above facts and circumstances of the case and also the principles laid down by the Hon'ble Apex Court for return of vehicle in the Judgment reported in **(AIR 2003 SC 638)** [cited supra], this Court is inclined to set aside the impugned order passed in Cr.M.P.No.5273 of 2016, dated 25.10.2016 by the learned Judicial Magistrate, Valliyoor, and direct the learned Judicial Magistrate, to return the seized vehicle viz., Tempo [TATA 407 Mini Lorry] bearing Reg.No.TN-65-E-9605, on the following



terms:-

(i) The petitioner / accused shall execute a bond for a sum of Rs.3,00,000/- (Rupees three lakhs only) to the satisfaction of the learned Judicial Magistrate, Vallioor;

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(ii) The petitioner shall not alienate the vehicle in any manner till adjudication is over.

(iii) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future

(iv) The Judicial Magistrate shall call for the original R.C.Book from the said Finance Company, who is in possession of the original R.C.Book, as stated by the petitioner herein, for perusal, if the Magistrate has any doubt in genuineness of the xerox copy produced by the petitioner and retain the xerox copy of the R.C.Book to be attested and return the original R.C.Book to the person, who produced, after comparison, and

(v) The proper panchanama should be prepared before handing over the possession of the vehicle that can be used in evidence instead which produced before the Court during trial.

11. In the result, the Criminal Revision is ordered with the above directions.

Sd/-

Assistant Registrar (CS I)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Vallioor

2.The Inspector of Police,
Vallioor Police Station,
Tirunelveli 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.

+2cc to Mr.T.A.Ebenezer, Advocate Sr.No.6169 & 73838

mpk

sm:JM:SAR I:3.2.2017:5P/7C

Order made in
Crl.RC(MD)No.773 of 2016
Dated:-
03.02.2017