



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.6713 of 2011
and M.P.No.1 of 2011

WEB COPY

S.Jaya

... Petitioner

-vs-

1.State represented by its
Sub Inspector of Police,
Anchugramam Police Station,
Kanyakumari District
Crime No.346/2010

2.Mohammed Haneefa

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and set aside the order, dated 01.06.2011 passed in Crl.M.P.No.808/2011 on the file of the Court of Judicial Magistrate, No.III, Nagercoil, and return the Auto bearing Chasis No.MD2AA24ZZTWE52567 Engine No.24MBTE65953 to the petitioner for interim safe custody pending the dispose of the case.

For Petitioner : Mr.J.John Jayakumar

For Respondents : Mr.K.Anbarasan

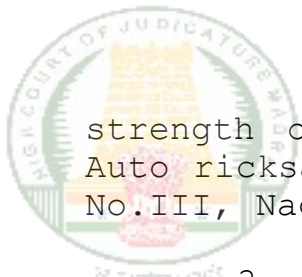
Govt. Advocate (Crl.Side)for R1

Mr.P.Subbiah for R2

ORDER

This petition has been filed to set aside the order, dated 01.06.2011 passed in Crl.M.P.No.808/2011 on the file of the Court of Judicial Magistrate, No.III, Nagercoil, and return the Auto bearing Chasis No.MD2AA24ZZTWE52567 Engine No.24MBTE65953 to the petitioner for interim safe custody pending the dispose of the case.

2. On the complaint lodged by Stephen, the respondent registered a case in Crime No.346 of 2010 on 24.09.2010 under Sections 366(A) and 379 IPC against Mohammed Haneefa and 5 others. It is the case of the defacto complainant Stephen that on 17.09.2010 around 11 a.m. in the morning, his wife Jeya was abducted by Mohammed Haneefa and other accused and that she was wearing jewelry and had also taken Rs.5 lakhs cash. It is the further allegation that Mohammed Haneefa had stolen the money from his wife Jeya and had purchased an auto on 30.08.2010. On the



strength of these allegations, the respondent police seized the Auto ricksaw and produced the same before the Judicial Magistrate, No.III, Nagercoil.

3. Jeya filed Crl.M.P.No.808/2011 and Mohammed Haneefa filed Crl.M.P.No.1522/2011, both under Section 451 Cr.P.C. for handing over the Auto Rickshaw to them. The trial Court, after detailed enquiry, by order dated 01.06.2011, directed that interim custody of the said Autorickshaw should be given to Mohammed Haneefa. Challenging which, Jeya is before this Court.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. side) for the 1st respondent.

5. On a reading of the FIR given by Stephen, in Crime No.346/2010, it is alleged that Jeya was taken away by Mohammed Haneefa and his associates on 17.09.2010 and that she was wearing lot of jewelry and that she had also taken away cash of Rs.5 lakhs. It is further alleged that Mohammed Haneefa had purchased the Autorickshaw with the money taken from Jeya. However, the Autorickshaw does not stand in the name of Jeya nor Jeya has the driving license to drive the Autorickshaw. The learned Judicial Magistrate, relied upon the judgment of the Hon'ble Supreme Court in **Synderbhai Ambalal Desai v. State of Gujarat [AIR 2003 SC 638]** and had given only interim custody of the Autorickshaw to Mohammed Haneefa. The question of title to the Autorickshaw cannot be determined by the criminal Court.

6. The fact remains that the said Autorickshaw was seized by the police from Mohammed Haneefa and therefore, there is nothing illegal for the trial Court handing over the Autorickshaw to Mohammed Haneefa and not Jeya, who does not have the driving licence to drive the Autorickshaw.

7. In the result, this Court finds no infirmity in the order passed by the trial Court. Accordingly, this petition stands dismissed. It is always open to the petitioner to work out her remedy before the civil Court, if there is any. Consequently connected Miscellaneous Petition is closed.

Sd/-

ASSISTANT REGISTRAR(C)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

- 
- 1.The Judicial Magistrate, No.III,
Nagercoil.
2.-do-Thro'Chief Judicial Magistrate,
Kanyakumari District.
3.The Sub Inspector of Police,
Anchugramam Police Station,
Kanyakumari District
4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to P.SUBBIAH Advocate in Sr.No.53284
+1cc to J.JOHN JAYAKUMAR Advocate in Sr.No.53814
rr
js/RSK/5/05/2017/3P-7C

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