

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.22634 of 2018

Arun

.. Petitioner

Vs

The State

Rep. by Sub Inspector of Police,
Walajabad Police Station,
Kanchipuram

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and set aside the order dated 09.08.2018 made in Criminal Revision Petition No.20 of 2018 on the file of the learned Sessions Judge, Sessions Court-II, Kanchipuram confirming the judgment passed by Judicial Magistrate No.II, Kanchipuram in Crl.M.P.No.3272 of 2018 dated 05.07.2018 and direct the release of the vehicle bearing Registration Certificate No.TN23AM 5062 to the petitioner.

For Petitioner : Mr.G.Jeremiah

For Respondent : Mrs.M.Prabhavathi, APP

O R D E R

This petition has been filed by the accused to set aside the order passed by the learned Sessions Judge, Sessions Court-II, Kanchipuram in Crl.R.P.No.20 of 2018 dated 09.08.2018 confirming the order passed by the learned Judicial Magistrate No.II, Kanchipuram in Crl.M.P.No.3272 of 2018 dated 05.07.2018.

2.The learned counsel for the petitioner has submitted that the respondent herein has registered a false case against the petitioner herein in Crime No.61 of 2018 stating that the petitioner herein has used his lorry bearing registration No.TN23 AM 5062 for transporting the river sand illegally. He further submitted that in that case, the petitioner herein has filed an application in Crl.M.P.No.253 of 2018 to return the said lorry and the said application was allowed by the Judicial Magistrate No.II, Kanchipuram, on condition that the petitioner

shall execute a bond for Rs.10,00,000/-. He further submitted that in pursuance of the said order, the vehicle was returned to the petitioner and the petitioner was using the vehicle for only legal purpose, but, the respondent, again registered a case in crime No.277 of 2018 on 03.06.2018, alleging that the petitioner has used the said vehicle for illegal transport of sand. He further submitted that for return of the vehicle, the petitioner has filed Crl.M.P.No.3272 of 2018 before the Judicial Magistrate No.II, Kanchipuram and the learned Judicial Magistrate has dismissed the said petition, by the order dated 05.07.2018 and as against the same, the petitioner has filed Crl.R.P.No.20 of 2018 before the Sessions Judge, Sessions Court No.II, Kanchipuram and the learned Sessions Judge has dismissed the said Criminal Revision, by the order dated 09.09.2010, confirming the order passed by the learned Magistrate and hence, the petitioner has filed the present petition under Section 482 Cr.P.C. to set aside the order passed by the learned Sessions Judge.

3.The learned counsel for the petitioner relying upon the decision of the Hon'ble Supreme Court in Sunderbhai Ambalal Desai Vs State of Gujarat (2002) 10 SCC 283 has submitted that the vehicle should not be kept in idle and the same should be returned to the petitioner for interim custody and hence, he requests to set aside the orders passed by the learned Sessions Judge and the Judicial Magistrate No.II, Kanchipuram and to direct the learned Judicial Magistrate No.II, Kanchipuram to return the vehicle to the petitioner for interim custody.

4.The learned Additional Public Prosecutor has submitted that the petitioner, after getting back the vehicle from the Court, has used the said vehicle again for transporting sand illegally and hence, the Courts below have rightly rejected the petitioner's request and therefore, she prays to dismiss the petition.

5.In Sunderbhai Ambalal Desai's case (supra), the Hon'ble Supreme Court in paragraph Nos.17 and 18 has observed as follows :

"17. In our view, whatever be the situation, 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.

18.In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third

person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

6.From the aforesaid decision, it is clear that it is of no use to keep the seized vehicles at the police stations for a long period and it has to be returned to the person, from whom the vehicle has been seized. However, in this case, the petitioner has already got back the vehicle by executing a bond and it is alleged that the petitioner has used the vehicle for committing the same kind of offence. Hence, this Court is inclined to impose some additional conditions for returning the vehicle.

7.In the result, this petition is allowed, the order passed by the learned Sessions Judge, Sessions Court No.II, Kanchipuram in CrI.R.P.No.20 of 2018 dated 09.08.2018 and the order passed by the learned Judicial Magistrate No.II, Kanchipuram in CrI.M.P.No.3272 of 2018 dated 05.07.2018 are set aside.

8.The Judicial Magistrate No.II, Kanchipuram is directed to return the lorry bearing registration No.TN23 AM 5062 to the petitioner on the following conditions :

- i. on executing a bond by the petitioner for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) and also on deposit of a sum of Rs.50,000/- (Rupees Fifty Thousand only) before the Court of the Judicial Magistrate No.II, Kanchipuram.
- ii.The petitioner shall not alienate the property and the same should be produced as and when required by the Judicial Magistrate No.II, Kanchipuram.

iii.The petitioner shall produce the photographs of the property with negative/CD on panchnama and the original RC book before the Court, if already not produced in Crime No.61 of 2018 on the file of the respondent.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gya

To

1.Sessions Court-II,
Kanchipuram.

2.Judicial Magistrate Court-II,
Kanchipuram.

3.Sub Inspector of Police,
Walajabad Police Station,
Kanchipuram.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Jeremiah, Advocate Sr.65988

सत्यमेव जयते

CRL.O.P.No.22634 of 2018

srg 9/10/2018

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