

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2018
Pronounced on : 17.12.2018

CORAM:
THE HONOURABLE MR. JUSTICE V.PARTHIBAN
Crl.R.C.No.1317 of 2018

Thirupathy @ Senthil Kumar

...Petitioner

Vs.

1. State Rep. by
The Sub-Inspector of Police,
Alangayam Police Station,
Vellore District.

2. S.V.Devan
3. R.Boopalan
4.

...Respondents

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records on the file of the learned Judicial Magistrate No.III, Thiruppathur, Vellore District, in Crl.M.P.No.2108 of 2018 in Crime No.177 of 2018 dated 24.10.2018 and set aside the same.

For Petitioner: Mr.E.Kannadasan

For Respondent: Mr.G.Hari Hara Arun Soma Sankar,
Govt. Advocate (Crl.Side) for R1

ORDER

In the present revision case, a preliminary objection was taken by the learned Government Advocate (Crl.Side) appearing for the first respondent police that the revision case is not maintainable under Section 397 of Cr.P.C., against the order passed by the Court below under Section 451 of Cr.P.C., refusal of return of properties. According to the learned Government Advocate, the order being passed under Section 451 of Cr.P.C., is only an interlocutory in nature and such order is not open to challenge in the revision case, in view of the bar of Section 397(2) of Cr.P.C., which, is extracted hereunder.

"(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

2 The learned Government Advocate would also refer to the contents of Section 451 of Cr.P.C. which provides for passing of order pending conclusion of the enquiry or trial and therefore this revision case is against such interlocutory order passed by the learned Magistrate under Section 451 of Cr.P.C., which is extracted hereunder for appreciation of the preliminary objection raised by the learned Government Advocate (Crl.Side) appearing for the first respondent police.

"451. Order for custody and disposal of property pending trial in certain cases.

When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—

For the purposes of this section, "property" includes—

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

3 In support of his contention, the learned counsel straight away would draw the attention of this Court to the order passed by the learned Judge of this Court in Crl.MD.No.30 of 2012 dated 27.01.2012 in the case of K.Basha vs State. The learned Government Advocate would draw reference to paragraph nos. 8 to 10 of the order, which is extracted hereunder:

"8.If at all the petition for interim custody is returned in utter disregard of the directions of the Hon'ble Supreme Court issued in Sunderbai Ambalal vs. State of Gujarat's case, which was followed in a catena of cases by various High courts, the petitioner could have re-presented the petition drawing the attention of the Judicial Magistrate to the said judgment. Instead of doing it, the petitioner has chosen to file a revision before the High Court invoking sections 397 and 401 Cr.P.C, despite the existence of a provision in sub-section 2 of section 397 Cr.P.C. It shall also be appropriate to observe here that the tendency shown by some of the Judicial Magistrates in simply returning the petitions filed either under section 451 or under section 457 Cr.P.C seeking interim custody of the properties seized by the police citing the non-production of the property before the Magistrate as the

reason will amount to dereliction of the duty on the part of the Judicial Magistrate, provided the petition is filed under appropriate provision without misleading the Magistrate as to the provision applicable, since section 451 and 457 Cr.P.C apply under different circumstances. A similar tendency is also seen on the part of the litigants to approach the revisional court against such return unmindful of the fact that such an order is only an interlocutory order and not a final order finally disposing of the petition and the petition could be re-presented stating how the reasons assigned by the court for the return of the petition are not correct.

9. When there is a specific provision barring entertainment of the revisional powers in respect of interlocutory orders, the said provision should be respected and the same should not be flouted and made a dead letter by entertaining revision on the ground that the interest of justice would require such entertainment to avoid miscarriage of justice or to render complete justice. The said grounds pertain the domain of the inherent powers of the High Courts under section 482 Cr.P.C. In such cases, it may be appropriate to file a petition under section 482 Cr.P.C, but that does not mean that such an order can be challenged by way of a revision under section 397 r/w 401 Cr.P.C. If such a revision is entertained as a revision case, the same will amount to recognizing a power on the Sessions Judge also under section 399 to entertain a revision against such an order, which no-doubt is an interlocutory order. For all the reasons stated above, this court comes to the conclusion that the present Criminal Revision Case is not maintainable and the same deserves to be dismissed.

10. Accordingly, the Criminal Revision Case is dismissed as not maintainable, as it stands barred by section 397 (2) Cr.P.C. The office is directed to return the unnumbered criminal miscellaneous petition filed by the petitioner in the trial court to the petitioner retaining the copy of the same available in the typed set of papers to enable the petitioner to re-present the same before the learned Judicial Magistrate concerned.

According to the learned Government Advocate, the learned Judge has categorically held that the revision would not lie against the order passed by the trial Court under Section 451 of Cr.P.C. He would also further submit that the statutory provisions are very clear that the orders are passed either way under Section 451 of Cr.P.C., only pending finalisation of the trial and therefore there is a clear bar as provided under Section 397(2)

of Cr.P.C.

4 At this, the learned counsel appearing for the petitioner would submit that all along this Court has been entertaining the revision cases against the orders passed by the lower Court under Section 451 of Cr.P.C and several orders have been passed by various Judges of this Court entertaining the revision cases against the order passed under Section 451 of Cr.P.C.

5 In any case, the counsel should point out that the order relied on by the Government Advocate appearing for the first respondent police did not lay down the correct proposition of law, since, as far as, return of properties is concerned, there is a final determination of right of the party and such determination cannot be construed as one of the interlocutory in nature. According to the counsel that the right to properties is a constitutional right and rejection of such right even though in pendency of trial cannot by any stretch on legal standard be construed as interlocutory in nature.

6 In support of his contentions, the learned counsel has relied on the decision of High Court of Himachal Pradesh reported in (1989) 0 CrLJ2537 (Praveen Kumar vs. State of Himachal Pradesh). The learned counsel would draw the attention of this Court to paragraph nos.7 and 8, wherein, the issue was addressed and the revision was held to be maintainable. The said paragraphs are extracted hereunder.

"7. Now the question is which order can be said to be interlocutory and, therefore, not revisable and which order final and liable for revisional jurisdiction of the Court of Session and the High Court. It is impossible to lay down any strict principles and guidelines to effect a complete and unassailable division. Therefore, the matter has to be examined by the Court to arrive at a decision on such an issue. In Para 12 of this judgment AIR 1978 SC 47 : (1978 Cri LJ 165), the Court observed:- "Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In Volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606:- ".....a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required." In Para 1607 it is said:- "In general a judgment or order which determines the principal matter in question is termed 'final'." In

Para 1608 at pages 744 and 745 we find the words: "An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate; matter with which it deals." The Court further observed in Para 13 that:—"....The order can be said to be a final order only if, in either event, the action will be determined. In our opinion, if this strict test were to be applied in interpreting the words "interlocutory order" occurring in S. 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal application/of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will, render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by S. 397(1). On such a strict interperatation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature, when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code....."The Court further said:—"..... On the one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswamy's case AIR 1949 FC 1 : (1950-49 Cri LJ 625) (supra) but, yet it may not be an interlocutory order, pure or simple. Some kinds of orders may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-s. (2) of S. 397 is not meant to be attracted to such kinds of intermediate orders. They may not be

final orders for the purposes of Art. 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of S. 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well known and can be culled out from any decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-sec. (2) of S. 397. In our opinion it must be taken to be an order of the type falling in the middle course."

8. An application under Sec. 451 Cr. P.C. has to be decided by the Court after hearing the parties seeking the release of the property in question. The parties are allowed to adduce evidence and it is only after hearing them that the Court passes the order thereby giving the custody of the property to one of them who may be adjudged by the Court to be best entitled for the same. To say that such an order is revisable by the Court on the termination of the proceedings or in between is no reason to call the order interlocutory order. Till such an order is made, it is final between the parties and the Magistrate cannot arbitrarily or without proper justification change the same during the course of the proceedings. The argument of the petitioner that such an order becomes final on the termination of the proceedings cannot be accepted because even that order is subject to determination by a Civil court. Therefore, in the light of the decision of the Supreme Court in Madhu Limaye's case (1978 Cri LJ 165) (supra), it can be held that this kind of order is final between the parties deciding their entitlement to the property in question finally at that stage. Therefore such an order is necessarily subject to revision by the Court and revision against the same is competent before a Court of Session. The view which I have taken has a support from 1981 Cri LJ 1529 (Andh Pra) Bharat Heavy Electricals Ltd. v. State and 1974 Cri LJ 231 (Ishar Singh v. The State of Punjab) The argument of Sh. S.S. Kanwar on this count, therefore, fails and is rejected."

The counsel appearing for the petitioner would also draw the attention of this Court to the detailed reasoning given by the yet another High Court of Karnataka vide its order dated

17.09.1992 in Criminal Revision Petition No.72 of 1990 in the case of T.Narayanaswamy vs. State and others reported in Manupathra in MANU/KA/0120/1992, the relevant portion of the order is extracted hereunder:

"4. The learned counsel for the petitioner contended that the Sessions Judge has no jurisdiction to entertain the revision petition filed by respondent No. 2, as the order passed by the learned Munsiff and J.M.F.C., was only an interim order. This point has been dealt with by this Court in the case of M. Abbas v. State of Karnataka, 1980(2) K.L.J. 259. His Lordship has relied on the ruling of the Supreme Court in interpreting the expression "interlocutory order". The relevant portion of his Lordship in that judgment is as follows :

"Taking the first contention of Mr. Gopalakrishna, it appears, there is not much substance in the same. What is an interlocutory order has not been defined. This was also one of the contentions raised before the learned Sessions Judge, and he has rightly rejected the contention after discussing the case law on the point. In Madhu Limaye v. State of Maharashtra (1978) Cri LJ 165 their Lordships of the Supreme Court observed (at page 169) :-

"Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1806 :-

"..... a judgment or order may be final for one purpose and interlocutory for another, or final to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required"

In Para 1607 it is said :

"In general a judgment or order which determines the principal matter in question is termed final."

In para 1608 at pages 744 and 745 we find the words :

"An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final

judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

Proceeding further, their Lordships observed :

"Although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in manner which would fit in the context of the other provisions of the statute and bring about the real intention of the legislature. On the one hand, the legislature kept intact the revisional power of the High Court, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami's case, AIR 1949 FC 1 : (49 Cri LJ 625) (supra), but, yet it may not be an interlocutory order pure or simple. Some kinds of the order may fall in between the two. By a rule of harmonious construction, we think that in bar in sub-section (2) of S. 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purpose of Art. 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of S. 397(2). We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of S. 397. In our opinion it must be taken to be an order of the type falling in the middle course."

Mr. Gopalakrishna invited my attention to the decision in Nathu Lal v. State, 1976 Cri LJ 358 (All) and argued, the order passed under S. 451 Cr.P.C. was in the very nature interlocutory, because it was an order passed during the pendency of the proceeding and subject to the final determination on the conclusion of the trial. No doubt, the decision supports his contention. But with due respect, I am unable to persuade myself to accept it as laying down the correct law on the question. The provisions of S. 451, Cr.P.C. empowers the Court to make such order as necessary for interim custody of the property produced before the Court during the enquiry and trial and any order passed under S. 451, Cr.P.C., so far as that

stage is concerned, would be final between the parties, in that it concludes who among the contending parties would be entitled to the interim custody and is final as between the contending parties and is therefore open to revision." In view of this ruling the order of the learned Magistrate granting interim custody of the vehicle to the petitioner cannot be said to be an interlocutory order and therefore the respondent No. 2 has challenged it by way of revision in the Court of the Prl. Sessions Judge, Shimoga, Similarly, when the revision petition is decided against the petitioner, he has got a right to prefer a revision petition against that order which cannot be construed as an interlocutory order for the purpose of S. 397, Cr.P.C. in this Court.

Further the learned would also draw reference to the observation made in Paragraph no.8 of the order of the Hon'ble Supreme Court made in Appeal (Crl) 858 of 2001 dated 27.08.2001 reported in Manupathra in MANU/SC/0489/2001, which is extracted hereunder.

"8. The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short the Code) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: If the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If it would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage."

Lastly, the learned counsel would rely on the decision rendered by the High Court of Andhra Pradesh in Crl.R.C.No.268 of 1981 dated 10.08.1981, in the case of Bharat Heavy Electricals Ltd., vs. State and another, wherein, the learned Judge has held that orders passed under Section 451 of Cr.P.C. is not an interlocutory order. The observation of the learned Judge in Paragraph no.15 is extracted hereunder.

"15. I do not agree with the learned counsel for the respondent that it is an interlocutory order and no revision lies under Section 397(2) Cr.P.C. The order in question substantially affects the rights of the parties. If so, it cannot be considered to be an interlocutory order. (See Amar Nath v. State of Haryana, Manu/SC/0068/1977 : 1977

Cr1J1891)."

7 In view of the above decisions of several High Courts and also the observations of the Hon'ble Supreme Court as cited supra, the orders passed under Section 451 of Cr.P.C. cannot be essentially an interlocutory order and therefore Section 397(2) of Cr.P.C. is not attracted. Therefore the learned counsel would submit that the present revision case will have to be entertained and orders may be passed on its merits.

8 This Court has considered the rival submissions made by the learned counsels both on the side of the petitioner as well as on the side of the first respondent police. Although, the learned Judge of this Court has held that the revision is not maintainable against the order passed under Section 451 of Cr.P.C. overwhelmingly this Court entertained revision cases against the orders passed under Section 451 of Cr.P.C. Several decisions rendered by the various judges of this Court have been brought to the knowledge of this Court and this fact has not been disputed by the learned Government Advocate appearing for the first respondent police. However he would only submit that this issue was not raised in such revisions and therefore there was no occasion for several judges of this Court to embark upon the maintainability of the revision cases.

9 In any case, after perusing the various judgments, which are brought to the attention of this Court, this Court is of the view that the orders passed under Section 451 of Cr.P.C. cannot be characterised as an interlocutory order essentially. It depends upon the property seized and properties produced before the Court. Some may lose its value by passage of time; some may perish due to exposure to rain and sun or due to efflux of time and in such event, the Magistrate is empowered to dispose of the properties, pending finalisation of the trial. In such circumstances, it should be considered that the order to be passed under Section 451 of Cr.P.C. is almost like final orders touching upon valuable right to property of the petitioner. Any decision rendered by the Courts, exercising power under Section 451 of Cr.P.C. will affect the rights of the petitioner to have his property returned and in such circumstances to turn the petitioner away on the ground that the revision case is not maintainable, will not secure the ends of justice. More so, such orders passed under Section 451 of Cr.P.C. are also not appealable.

10 For the above said reasons, this Court is more inclined to accept the decision of various High Courts which held that the revision is maintainable against the order passed under Section 451 of Cr.P.C. as the same is not interlocutory in nature, but such order determines the constitutional rights of

the petitioner for return of properties or for disposing of properties. Therefore the revision case shall be disposed of on its merits, by holding that the revision is maintainable.

11 The present revision case has been filed against the order passed by the learned Judicial Magistrate No.III, Thgiruppathur, Vellore District, in CrI.M.P.No.2108 of 2018 in Crime No.177 of 2018 dated 24.10.2018, rejecting the petition filed under Section 451 of Cr.P.C, seeking return of vehicle seized by the first respondent police and produced before the Court.

12 After hearing both the parties, the learned Magistrate has dismissed the petition on the basis of an order dated 24.09.2018 passed by the Division Bench of this Court in W.P. (MD).No.7595 of 2018, which is extracted hereunder:

"We have perused the report filed by the third respondent District Collector, Pudukkottai. From the submissions made on both sides, we are satisfied that not only in the place, which is subject matter of writ petition, but also in the entire State indiscriminately mining is going on illegally by using vehicles and bullock carts. The action taken is far and few. We are afraid to say that even this is mainly restricted to only imposing of fine. The vehicles involved are either released by the official respondents or by the Courts. Every thing has become a part of the routine transaction.

The action taken so far has not yielded any result. Sand in the present form takes thousands of years. Removal of the sand will lead to a destruction of the rivers. At this speed, we may lose the rivers once for all. A report of NITI Aayog - a Government Think Tank, indicates by 2050 there will not be any water for the entire state. 21 cities including Chennai will run out of ground water affecting about 100 millions people. The aforesaid situation is the stock reality borne out of the greed of the man. May be, the generation next might see water only in bottle. Day in and day out we are forced to deal with such cases. However, illegal mining goes on unchecked under our nose. This is the reality.

2. Taking note of the aforesaid situation, we direct the State of Tamil Nadu, represented by the Secretary, Home Department, Fort St. George, Chennai, impleaded suo motu as 8th respondent, to see to it that appropriate steps are taken by placing the responsibility on the revenue officials on ground. We further direct all the District Collectors in the

entire state not to release any vehicle, which is involved in illegal mining of sand until further orders from this Court. In case of involvement of bullock carts, the carts will have to be retained while releasing the bulls. We also make it clear that no Courts in the State shall entertain any request from the owners of the vehicles involved in illegal sand mining. We may note registering Criminal cases made little impact which cases ending in acquittal".

13 The learned counsel appearing for the petitioner would submit that subsequently the Division Bench of this Court has modified the above order on 29.10.2018 in a batch of writ petitions and held as under:

"4. According to the petitioners, the official respondents seized the vehicles in question on the ground of want of valid permit and till date no order has been passed by the respondents concerned. Hence these writ petitions have been filed.

5. On the other hand, it is submitted by the learned Government Advocate/Special Government Pleader/Additional Government Pleader appearing for the respective respondents that the vehicles in question were used for illegal transportation of mines and minerals like sand, gravel etc., and hence they were seized.

6. In any event, as the vehicles are under the custody of the respondents from the date of seizing and considering the fact that if the same is allowed to be kept idle by exposing the same to sun and rain, it would certainly diminish their value. Therefore, this Court is of the view that the vehicles may be released by imposing conditions on the petitioners for release of the same.

"7. Accordingly, the concerned respondents are directed to release the vehicle in question to the petitioners within a period of 7 days from the date of receipt of a copy of this order subject to the following conditions:

"(i) The petitioners shall produce necessary documents before the respondents to establish the ownership of the vehicle in question.

(ii) The petitioners in W.P.(MD).Nos.215639, 21816 and 21300 of 2018 shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, before the Tahsildar concerned as non refundable deposit and the petitioners in other

cases shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) each, before the Tahsildar concerned as non refundable deposit;

(iii) The petitioners shall give an undertaking that he will not use the vehicle for any illegal activities in future and shall produce the same as and when required by the respondents;

(iv) on doing so, the vehicle in question shall be returned to the petitioners;

(v) The petitioners shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned; and

(vi) The petitioners are also directed to participate in the enquiry to be conducted by the respondents."

The learned counsel would also rely on the observations made by the Hon'ble Supreme Court of India in its judgment reported in (2002) 10 SCC 283. The learned counsel would draw the attention of this Court to Paragraph no.17 of the order, wherein, the Hon'ble Supreme Court 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."

The learned counsel would further draw the attention of this Court to yet another decision of the Hon'ble Supreme Court reported in (2010) 6 SCC 768 and would refer to paragraph no.14 of the order, which is extracted hereunder:

"14.It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Government/Union

Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned."

In view of the same, the learned counsel appearing for the petitioner would submit that the order passed by the learned Magistrate is liable to be interfered with.

14 At this, the learned Government Advocate (Crl.side) appearing for the first respondent police would submit that the petitioner having involved in illegal activities, cannot be granted any relief and the learned Magistrate has rightly dismissed his claim, which does not call for any interference.

15 Heard the rival submissions made by the learned counsel on either side and perused the materials placed on record.

16 Considering the observations made by the Hon'ble Supreme Court and also the fact that the property, which is sought to be returned will lose its value and ultimately it is of no use to any stake holder in keeping the property in the custody of the police, in all fairness and fitness of things that pending finalisation of the trial or investigation, the vehicle, as far as possible shall be returned to the owner. In this case, this Court is satisfied that the vehicle is liable to be returned to the owner. Therefore, the impugned order passed by the learned District Munsif cum Judicial Magistrate No.III, Tirupattur, Vellore District, in CMP.No.2108 of 2018 in Cr.No.177 of 2018 dated 24.10.2018 is hereby set aside. The vehicle covered under C.M.P.No.2108 of 2018 is ordered to be released within a period of one week from the date of receipt of a copy of this order subject to the following conditions:

"(i) The petitioner shall produce necessary documents before the respondent to establish the ownership of the vehicle in question.

(ii) The petitioner shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, before the Tahsildar concerned as non refundable deposit;

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

when required by the respondent;

(iv) The petitioner shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned; and

(v) The petitioner is also directed to participate in the enquiry to be conducted by the respondent."

17 In the result, the criminal revision is allowed in terms of the above conditions.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

cgi

To

1. The Judicial Magistrate No.III,
Tirupattur, Vellore District.
2. The Additional Public Prosecutor,
High Court of Madras.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No. 87505

Cr1.R.C.No.1317 of 2018

GN(18/12/2018)

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