



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.05.2018

CORAM:

THE HON'BLE MR.JUSTICE T.KRISHNAVALLI

Cr1.RC(MD) No.227 of 2018

P.Saraswathi : Petitioner/Petitioner/Accused

-vs-

The State rep. by
The Sub Inspector of Police,
Gudalur South Police Station,
Theni District.
(Crime No.9/2018)

: Respondent/Respondent/Complainant

PRAYER: This Criminal Revision has been filed under Section 379 r/w Section 401 of Cr.P.C, challenging the order, dated 30.01.2018 made in Cr.M.P.No.211 of 2018 on the file of the learned Judicial Magistrate, Uthamapalayam.

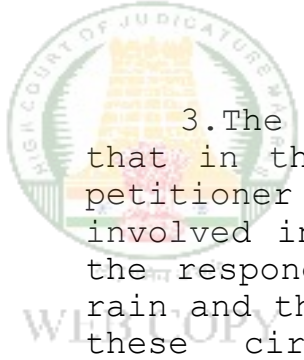
For Petitioner : Mr.P.Mahendran

For Respondent : Mrs.M.Anantha Devi
Government Advocate

O R D E R

The Revision Petitioner/Petitioner (Vehicle Owner)/third party has preferred the instant Criminal Revision Petition as against the order, dated 30.01.2018 in Cr1.M.P.No.211 of 2018 passed by the Learned Judicial Magistrate, Uthamapalayam.

2.The learned counsel for the petitioner would submit that the petitioner is the owner of the vehicle bearing No.TN-60-E-4251 (Mahindra Pick Up Van) and she derived income through hiring of the above vehicle for transportation purposes of various agricultural items in and around Uthamapalayam to other distinctions and while so, on 10.01.2018, the respondent police have registered a case in Crime No.9 of 2018 for the alleged offence under Section 379 IPC against four accused persons, on the basis of the complaint given by one Thanickachalam, who is a resident of the Gudalur Town stating that the accused were illegally loading banana Vaalai tharu belonging to the de-facto complainant on the vehicle of the petitioner and when he chased them, they ran away and based on the confessional statement given by the accused, it was revealed that one of the accused took the said vehicle from the petitioner stating he wanted the same for his personal and bona fide use.



3. The learned counsel for the petitioner would further submit that in the FIR or in any statement of accused, the name of the petitioner is not at all mentioned and the petitioner is no way involved in the alleged Crime and now, the said vehicle is kept at the respondent police station and the same is exposed to sun and rain and the life of the said vehicle is getting deteriorated. Under these circumstances, the petitioner has filed petition in CrI.M.P.No.211 of 2018 before the learned Judicial Magistrate, Uthamapalayam under Section 451 of Cr.P.C for interim custody of the vehicle, but the learned Judicial Magistrate, Uthamapalayam without considering the merits of the petition, has simply dismissed the petition.

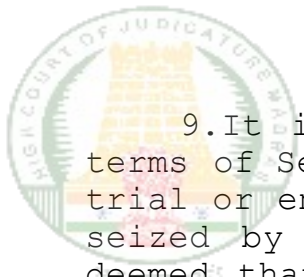
4. According to the learned Counsel for the Revision Petitioner, the trial Court should have seen that the Revision Petitioner/Petitioner is the owner of the vehicle bearing Registration No.TN-60-E-4251 Mahindra Pick Up Van and in reality, she is no way connected with the alleged offence. The learned Counsel for the Revision Petitioner takes a plea that the trial Court had committed an error in dismissing the Cr.M.P.No.211 of 2018 by passing the impugned order, dated 30.01.2018 and the trial Court had lost sight of the settled Law that mere pendency of confiscation proceedings before the competent authority would not preclude a Court of Law from exercising its jurisdiction for the return of vehicle in terms of the ingredients of Section 457 of Cr.P.C

5. Heard both sides and perused the materials available on record.

6. It is to be noted that after the amendment to Tamil Nadu Prohibition Act, 1937, the burden is shifted on the part of the owner of the vehicle to prove that he exercised due care in preventing the commission of the offence as per decision The Commissioner of Police, Madras V. R.Gothandapani reported in 1997 LW (CrI) Pg. 93.

7. In reality, before passing an order of confiscation pertaining to a vehicle, the appropriate authority is to provide reasonable opportunity to the owner of the vehicle, in the considered opinion of this Court.

8. It is to be remembered that for disposal of property in terms of Section 451 of Cr.P.C., it is just and necessary that the property should be under the control of the Learned Magistrate. In fact, not only in respect of the property in regard to an offence appears to have been committed or which appears to have been used for commission of the offence that the Court is empowered under Section 451 of Cr.P.C., to pass an order for custody and disposal of property, pending trial, but even in respect of a property produced before the Court, the Court is empowered to make such an order as per the decision Om Rajnarain, Shivpuri V. R.M.Patil, reported in, 1978 CrLJ page 1432. (Bom-DB).

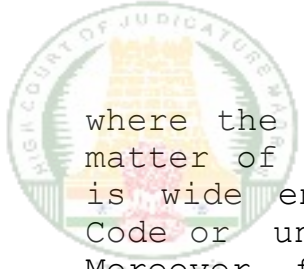


9. It is to be relevantly point out that the orders passed in terms of Section 451 and 457 of Cr.P.C., are during the pendency of trial or enquiry. When the complaint is filed in Court, the vehicle seized by the Police becomes a part of the complaint and it is deemed that the vehicle is also in the Court. Continuing further, just because a property is liable to be confiscated, it should not be released, during the pendency of trial, is not a reasonable ground for refusing the interim custody of the vehicle seized, in the considered opinion of this Court. If at all, a vehicle is meant for use, the user and the owner should not be deprived of such use, in the considered opinion of this Court. The vehicle is quite likely to rot and rust, if a vehicle was seized as a piece of evidence and further, the same is liable to be confiscated and at the time of passing an order on the question of interim custody, the prime consideration which should weigh with the Court of Law, is when the concerned person/petitioner is called upon, the vehicle would be produced for the purpose of evidence and if in the event of confiscation order, the same would be available for confiscation?

10. It is well-settled that a Court of Law is to exercise its judicial discretion, after taking into account the due consideration, interest of justice, including the future necessity of production of the seized vehicle/article at the time of trial. However, if the release of property in question/issue will in any manner affect or prejudice the course of justice, at the time of trial, it will be a sound exercise of judicial discretion to reject the claim for return, as opined by this Court. Under Section 457 of Cr.P.C., the title to the property is not determined or adjudicated. Indisputably, the order to be passed for return/release of vehicle is summary in character. Section 457 of Cr.P.C., enjoins a Court of Law to release the property seized by the Police from accused during investigation, but not yet produced before it, as per decision Amarjith Singh Vs State of Punjab reported in 1982 CrLJ at page 523 (Punjab & Haryana). Further, the powers of the Magistrate to order release of the vehicle in issue comes into operative play, when some investigation in respect of an offence is registered and the seizure is made of the property concerned.

11. Under Section 457 of Cr.P.C., it is to be pointed out that a Court of Law has power to order release of property seized from any person in connection with an offence, even though the property was not produced and the trial of the main case has not commenced, as per decision of the Honourable Supreme Court in Ram Prakash Sharma Vs State of Haryana reported in AIR 1978 Supreme Court page 1282. Also that, in the decision of Rajendra Prasad Vs State of Bihar reported in 2001 10 SCC page 88, the Honourable Supreme Court had held that "subject to certain conditions, the custody of vehicle can be entrusted during the pendency of trial temporarily to its registered owner".

12. It cannot be gainsaid that Section 102 of Cr.P.C., defines the power of Police Officer to 'seize certain property' especially



where the allegation of commission of an offence is alleged. As a matter of fact, Section 102 of Cr.P.C., speaks of any offences and is wide enough to cover offences either under the Indian Penal Code or under any special statute, as opined by this Court. Moreover, for an application of Section 102 of Cr.P.C, the essential requirements are that the properties said to be seized or frozen must be either stolen property or they should have been found to have some nexus with the alleged offence, which is under investigation of the concerned Police Officer, as per decision Rajamani Vs Inspector of Salem reported in 2003 CrLJ page 2902 at special page 2903.

13. In the present case on hand, the Revision Petitioner/Petitioner before the trial Court in CrI.M.P.No.211 of 2018, had categorically stated that she is the owner of Mahindra Pick Up Van bearing Registration No.TN-60-E-4251. It is not in dispute that the said vehicle was seized and presently, it is in custody of the police. At this stage, it is represented on behalf of the Respondent/Police that the vehicle was produced before the Judicial Magistrate, Uthamapalayam on 22.05.2018 and it was renumbered as RPR No.23 of 2018.

14. Be that as it may, this Court, on going through the impugned order in CrI.M.P.No.211 of 2018, dated 30.01.2018, passed by the trial Court is not correct in the eye of Law. Therefore, this Court interferes with the said order of dismissal, dated 30.01.2018 passed in CrI.M.P.No.211 of 2018 by the trial Court and sets aside the same to prevent an aberration of justice and to promote substantial cause of justice. Resultantly, the Criminal Revision Petition succeeds.

15. In fine, the Criminal Revision Petition is allowed and the order passed by the Learned Judicial Magistrate, Uthamapalayam in CrI.M.P.No.211 of 2018, dated 30.01.2018 is set aside by this Court for the reasons ascribed in this Criminal Revision Petition. Moreover, this Court, in the interest of justice, directs the trial court that the vehicle may be handed over to the Revision Petitioner/Petitioner on filing of Miscellaneous Petition by her, inasmuch as the trial Court can pass orders under Section 451 of Cr.P.C., only after a physical or symbolical production of the vehicle in question, of course after hearing the respective parties concerned. However, the return/handing over of the vehicle in question is subject to the fulfillment of following conditions, by the Petitioner.

(i) Soon after the production of the vehicle viz., Mahindra Pick Up Van bearing Registration No.TN-60-E-4251 before the trial court, the Petitioner is directed to produce all the necessary documents relating to the ownership of the vehicle.

(ii) The Petitioner shall execute a bond for a sum of <https://hcservices.recourts.gov.in/hcservices/> along with two sureties likesum to the satisfaction of the Learned Judicial Magistrate, Uthamapalayam;



(iii) The Petitioner shall surrender the R.C.Book and the Learned Judicial Magistrate, Uthamapalayam is at liberty to return the R.C.Book, in case of renewal, if any for the purpose of registration or for insuring the vehicle.

(iv) The Petitioner shall furnish an affidavit of undertaking to the effect that she will cause production of the vehicle in question before the appropriate/competent authority/Court as and when called for and further, she will not alienate the vehicle in question till the appropriate proceedings to be initiated or completed.

(v) The Petitioner shall not alter the character and nature of the vehicle except by carrying out necessary repairs to make the vehicle road worthy.

vi) The Petitioner should give an undertaking to produce the vehicle as and when required by the requisite authority/Prohibition Officer duly authorised in that behalf by the Government."

Sd/-
Vacation Officer

/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Uthamapalayam,
Theni District.

+1cc to M/s.P.Mahendran, Advocate, SR.No.66196

Cr1.RC (MD) No.227 of 2018
24.05.2018

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