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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : 13.7.2018
Order Pronounced on : 17.9.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Crl.O.P.(MD) No.10676 of 2018

Rajesh ... Petitioner

Vs.

State Rep. by
The Inspector of Police,
Thillainagar Police Station,
Trichy,
Trichy District. ... Respondent

Prayer: Petition is filed under Section 482 Cr.P.C, praying to direct the Judicial Magistrate No.IV, Trichy to modify the order, dated 14.5.2018 thereby permitting the petitioner to alienate Mahendra Car bearing No.TN 59 BT 8344 and accept the photograph of the said vehicle produced by the petitioner instead of directing the petitioner not to sell the same and produce the vehicle before 1st day of every month as a condition No.2 and 4 imposed by the court below.

For petitioner : Mr.Mr.B.Prahalad Ravi
For respondent : Mr.K.Suyambulinga Bharathi
Govt. Advocate (Crl.side)

O R D E R

The petitioner has come forward with this petition to modify the order, dated 14.5.2018 passed by the court below, by permitting the petitioner to alienate Mahendra Car bearing No.TN 59 BT 8344 and accept the photograph of the said vehicle produced by the petitioner instead of directing the petitioner not to sell the vehicle and produce the vehicle before 1st day of every month as a condition imposed by the court below.

2 Learned counsel for the petitioner submitted that the petitioner is the owner of Mahendra white colour Car bearing registration No.TN 59 BT 8344 and the same was seized by the respondent police in connection with the case in R.P.No.131 of 2018 on the file of the learned Judicial Magistrate No.IV, Trichy. The

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said vehicle was seized by the respondent based on the complaint lodged by one Krishnamoorthy as against Mukundan and 6 others and the same was registered in Cr.No.94 of 2018 under Section 147, 387, 506(ii) of I.P.C. and final report also filed before the court below. The petitioner has no connection with the accused person or the alleged offence. Petitioner hired his Car to the accused persons. Petitioner moved an application before the court below in Cr.M.P.No.3418 of 2018 for return of the aforementioned Car. The court below while allowing the application imposed stringent conditions as follows:

1. Petitioner shall execute a bond for a sum of Rs.10 lakhs
2. Petitioner should not alienate the said Car
3. Petitioner should deposit original R.C. book in the court below
4. Petitioner should produce the vehicle on the first working day of every month before the court below and also to produce the vehicle as and when required by the court below.

Petitioner is suffering from severe financial crunch, he could not able to settle his creditors. Therefore, in order to settle his creditors, he seeks permission to sell the Car by accepting the photographs of the said Car. In support of his submission, he relied on the decision of this Court in M/s.JUPITER ENTERPRISES VS. STATE REP. BY THE SUB INSPECTOR OF POLICE, BARIGAI POLICE STATION, KRISHNAGIRI DISTRICT (Crl.O.P.Nos.26532 to 26535 of 2017, dated 11.1.2018) wherein this Court followed the proposition held by the Hon'ble Supreme Court in SUNDARAM FINANCE LTD. VS. STATE OF TAMILNADU [(2011(1) MWN (Cr.) 437] which reads as under:

> *"21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.*
>
> *22.....*
>
> *23.....*
>
> *24. In our view, no further directions are required to be given in these matters. However, it is made clear that in case where accused disputes that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph. Further, with regard to the vehicles also, it is made clear that there may not be any necessity of*

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producing the vehicle before the Court and the Seizure report may be sufficient. The Special Leave Petitions are disposed of accordingly."

3. This Court in the judgment cited supra, held as follows:

"5. The present case in hand is also for permission to sell the vehicle involved in the case in Crime No.76 of 2016. According to the learned counsel for the petitioner, the vehicle (Lorry) bearing registration No.TN-70-L 9730 is absolutely belongs to the petitioner herein and the driver of the vehicle had committed the offence. Since the petitioner is unable to maintain his vehicle owing to various reasons including financial losses, they have sought permission to sell the vehicle."

4. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor (Criminal Side).

5 Admittedly, the petitioner was not implicated in the case registered in Cr.No.94 of 2018 under Section 147, 387, 506(ii) of I.P.C. or instigated the accused persons. Further, final report also has been filed before the court below. Petitioner has hired his Car to the accused persons and the police seized the vehicle from the accused persons. The court below though considered the request of the petitioner, imposed conditions as stated supra.

6 In the facts and circumstances of the case and in the light of the judgment of this court, made in **(VIJAYAKUMAR VS. THE STATE OF TAMILNADU REP. BY INSPECTOR OF POLICE, KAVERIPATTINAM POLICE STATION (Crl.O.P.No.5278 of 2007 and Crl.O.P.No.9744 of 2010 dated 9.7.2010),** this Court is inclined to modify the order of the court below, in so far as the condition No.2 is concerned and to pass the following order:

7(a) If the petitioner intends to sell the vehicle to any third party, the petitioner has to file an appropriate application before the learned Magistrate, along with an undertaking affidavit, seeking permission to sell the vehicle and to furnish the particulars of the purchaser in the application.

(b) The third party/Purchaser shall also file an affidavit of undertaking to the effect that he/she will produce the vehicle before the court as and when required by the court below.

(c) The court below upon production of the certified copy of this order, fix a date for production of the vehicle before it. On production of the vehicle, the court below shall cause photographs of the vehicle to be taken and record Panchanama thereof.

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(d) The photographs and Panchanama prepared shall be read as evidence in lieu of marking of the vehicle.

(e) In so far as the other conditions, the order passed by

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the court below remains unaltered.

8 The Criminal Original petition is disposed of with the above directions.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-)

To

1. The Judicial Magistrate No.IV, Trichy.

2. The Inspector of Police,
   Thillainagar Police Station,
   Trichy,
   Trichy District.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Mr.B.PRAHALAD RAVI, ADVOCATE IN SR No. 85392

VAAN
TE/RP/SAR-4 : 20/09/2018 : 4P/5C

Order in
Crl.O.P.(MD) No.10676 of 2018
Dated: 17.9.2018

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