



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.05.2018

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

Cr1.RC.No.267 of 2018

Jose Bencikar

.. Petitioner

Vs.

The State Represented by,
The Inspector of Police,
Panagudi Police Station,
Tirunelveli District,
(Cr.No.199 of 2018)

.. Respondent

Prayer :The Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C. to call for the entire records pertaining to the order passed by the learned Judicial Magistrate, Vallioor, Tirunelveli District in Cr.MP.No.2137 of 2018, dated 10.05.2018 and set aside the same and consequently direct the above said learned Magistrate to return the vehicle namely Ashok Leyland Torass Lorry bearing its Registration No.TN 75 W 7227 to the petitioner.

For Petitioner : Mr.A.Kesvan

For Respondent : Mr.APG.Ohm Chairma Prashu
Government Advocate (Cr1. Side)O R D E R

This petition has been filed by the petitioner to direct the respondent to return his vehicle viz., Ashok Leyland Torass Lorry bearing Registration No.TN 75 W 7227.

2.The petitioner submitted that based on a complaint given by the Village Administrative Officer of Perungudi on 13.04.2018, the respondent has seized the aforesaid vehicle that it transported sand without any valid permit and FIR was registered in Cr.No.199 of 2018 and the vehicle was produced before Judicial Magistrate, Vallioor, Tiruvenveli District. The petitioner filed Cr.MP.No.2137 of 2018 before Judicial Magistrate, praying for interim custody of the above said vehicle and the same dismissed on 10.05.2018. Hence, he has no other remedy except to approach this Court by way of the present petition.

3.Heard Mr.A.Kesavan, learned counsel for the petitioner as well as APG.Ohm Chairma Prashu, learned Government Advocate (Cr1. Side) for the respondent.



4. The learned counsel for the petitioner would seek to impress upon this Court that a false case stands foisted upon the petitioner. This Court is now concerned with return of property, pure and simple.

5. In the circumstances above stated, the Hon'ble Supreme Court in a judgment in *Sunderbhai Ambalal Desai v. State of Gujarat* reported in AIR 2003 Supreme Court 638 had clearly laid down the dictum in connection with the custody and disposal of property pending trial in certain cases. The relevant portion of the said order reads as follows:

"7. In our view, the powers under Section 451 Cr.P.C., should be exercised expeditiously and judiciously. It would serve various purposes, namely:--

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

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 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 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 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. In line with the above observations of the Hon'ble Supreme Court, it would be appropriate to order release of vehicle on the following conditions:

i) The respondent police is directed to produce the vehicle before the concerned Jurisdictional Court within a week from the date of receipt of a copy of this order and on production of the said vehicle, the concerned Jurisdictional Magistrate shall return the vehicle viz., Ashok Leyland Torass Lorry bearing Registration No. TN 75 W 7227 in the custody of the petitioner after complying with the following:

ii) The lower Court shall cause photographs of the vehicle to be taken and record panchanama thereof, the photographs taken shall be read as secondary evidence during trial and production of the vehicle shall be dispensed with.

iii) The Petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two sureties to the satisfaction of the learned Judicial Magistrate, Vallioor;

iv) The vehicle shall then be returned to the petitioner, who shall be at liberty to deal with the same in such manner as considered appropriate.

7. The above order is not determinant of the ownership or other rights in respect of the vehicle.

8. With the above observations and directions, the Criminal Revision is allowed.

Sd/-

Vacation Officer.

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Vallioor.
2. The Inspector of Police, Panagudi Police Station, Tirunelveli District,
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+1CC to Mr. A. Kesavan, Advocate, SR.No. 65849

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