

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 03.01.2018****CORAM:**

WEB COPY

**THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED****Cr1.RC(MD)No.898 of 2017**

T.C.Subhashini

: Petitioner / Petitioner

Vs.

State of Tamil Nadu  
Represented by its  
The Sub-Inspector of Police,  
Thuckalay Police Station,  
Kanyakumari District.

: Respondent / Respondent

**PRAYER:** Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order dated 05.10.2017 passed in C.M.P.No.3851 of 2017 by the learned Judicial Magistrate, Padmanabhapuram, by allowing this Criminal Revision Case.

For Petitioner : Mr.G.Aravinthan

For Respondent : Mr.C.Mayilvahana Rajendran  
Additional Public Prosecutor

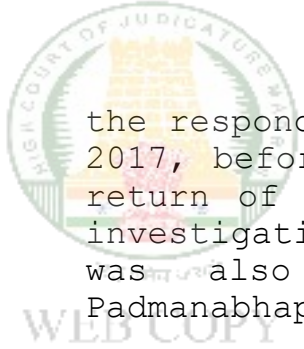
**ORDER**

This Criminal Revision Petition has been filed praying to set aside the order dated 05.10.2017, passed in C.M.P.No.3851 of 2017 by the learned Judicial Magistrate, Padmanabhapuram.

2. The Criminal Revision is taken up for final hearing, in the admission stage itself, with the consent of the learned counsel appearing for either side.

3. The petitioner is not an accused in C.C.No.287 of 2017 registered by the respondent Police on 25.05.2017, on the basis of the written complaint given by the Branch Manger, Tamil Nadu Transport Corporation, Thingal Nagar Branch, against the single accused viz., Sujin.

4. The case of the prosecution is that the accused is said to have attempted to dash the complainant by 'Mahindra Tourister Van', bearing Registration No.TN 75-U-6243 and the said vehicle was seized and remanded before the learned Judicial Magistrate, Padmanabhapuram in Crime No.286 of 2017, under R.P.No.164 of 2017. The petitioner herein is the owner of the said vehicle and she has stated that she rented out her vehicle to the concerned accused and the said vehicle was not involved in the occurrence, as alleged by



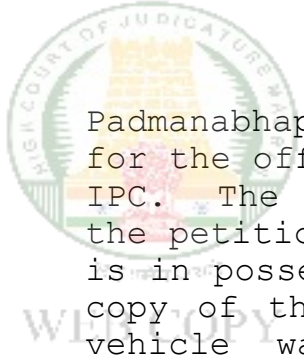
the respondent Police. The petitioner herein filed C.M.P.No.3851 of 2017, before the learned Judicial Magistrate, Padmanabhapuram, for return of the vehicle, as interim custody, during pendency of the investigation of the case and interim custody of the said vehicle was also ordered by the learned Judicial Magistrate, Padmanabhapuram in the month of August 2017.

5. The petitioner further states that the condition of the vehicle given to the petitioner, as interim custody, became worst, as the same was not maintained at all by the respondent Police during its custody with them. The said vehicle requires lot of money for restoring the vehicle to its original condition and requires to get fitness certificate and since it is not possible for the petitioner to spend such huge amounts, the petitioner has decided to sell the vehicle for some reasonable price to pay the loan amounts availed by the petitioner from her friends and relatives. Hence, the petitioner has filed an application in C.M.P.No.3851 of 2017, before the learned Judicial Magistrate, Padmanabhapuram, seeking permission to sell the vehicle viz., Mahindra Tourister Van, bearing Registration No.TN 75-U-6243, which is in the interim custody of the petitioner herein and it was dismissed by the said Court on 05.10.2017. Aggrieved by the order of dismissal, the petitioner has preferred the present Revision before this Court, seeking to set aside the order dated 05.10.2017 and to permit petitioner to sell the vehicle.

6. The counsel for the Revision Petition would submit that the petitioner is the absolute owner of the vehicle and if she is allowed to sell the vehicle, she can get a price and if not till the end of the trial, the same would get very low price, which would cause great hardship to the petitioner. In support of his contention, the learned counsel relied upon the decision of this Court in Sundaram Finance Ltd., Rep.by its Manager (Legal) Vs. State of Tamil Nadu Rep.By the Inspector of Police, Kaveripattinam Police Station, Krishnagiri Taluk and Another reported in [2011 (1) MWN (Cr.) 437]. The counsel further relied on yet another Judgment of this Court in Cr.R.C.(MD)No.308 of 2017 dated 15.08.2017 between Chinnathai Vs. The Inspector of Police, Dindigul District.

7. The learned Additional Public Prosecutor appearing for the respondent would submit only oral objections regarding the relief sought for in this Revision.

8. On perusal of the dismissal order passed by the Court below would show that the vehicle in question was involved in the commission of the offence and it is a vital Material Objects and since the investigation is still pending, the petitioner cannot seek permission to sell the said vehicle. The case property in this case is a Mahindra Tourister Van, bearing Registration No.TN 75-U-6243, belongs to the petitioner herein. The R.C.Book also stands in the name of the petitioner. There is no rival claim in respect of the seized vehicle before the learned Judicial Magistrate,



Padmanabhapuram. The FIR was registered by the respondent Police for the offence punishable under Sections 353, 294(b) and 506(ii) of IPC. The case is in the investigation stage. It is admitted that the petitioner was given the said vehicle as interim custody and she is in possession of the said vehicle as on date. On perusal of the copy of the R.C.Book filed by the petitioner would show that the vehicle was hypothecated to 'Mahindra and Mahindra Financial Services Limited', M.S.Road, Nagercoil - 629 003, on 07.07.2015. The counsel for the petitioner has also stated that the said hypothecation was not yet discharged and the petitioner is prepared to pay the loan amount to the concerned creditors, if any.

9. The order made in Cr.M.P.No.3410 of 2017 is not a final order and it is only an order for interim custody and such interim order is free to modify at any stage for the reasons to be recorded, as per the order passed by this Court in an unreported Judgement in Cr.R.C.(MD)No.198 of 2015, dated 01.06.2015 in D.Valluvan Vs. Sub-Inspector of Police, Narikudi Police Station, (Crime No.54 of 2014). The above decision is squarely application to the facts of the case on hand.

10. Considering the above facts and circumstances of the case, the objections raised by the learned Additional Public Prosecutor, and the reasons assigned in the impugned order and following the dictum laid down by the Hon'ble Apex Court in the Judgment in Sundarbhai Ambalal Desai Vs. State of Gujarat reported in (2003 (1) CTC 175), this Court is inclined to allow the Criminal Revision.

11. In the result, the Criminal Revision Case is allowed and the order passed by the learned Judicial Magistrate, Padmanabhapuram, in C.M.P.No.3851 of 2017, dated 05.01.2017, is set aside. The petitioner is permitted to sell her vehicle viz., Mahindra Tourister Van, bearing Registration No.TN 75-U-6243 in connection with the case in Crime No.286 of 2017, pending on the file of the respondent Police on the following conditions.

(i) The learned Judicial Magistrate, Padmanabhapuram, shall upon production of the certified copy of this order fix a date for production of vehicle before it.

(ii) Upon production, the learned Judicial Magistrate, Padmanabhapuram shall cause Photo of the vehicle to be taken on several angles, at the cost of Revision Petitioner and record Panchanama thereof, which shall be read as evidence in lieu of marking of the vehicle.

(iii). The petitioner is at liberty to effect sale of vehicle.



(iv) The sale proceeds of the vehicle shall be deposited with the learned Judicial Magistrate, Padmanabhapuram / Trial Court, which is directed to deposit the same in a Fixed Deposit, in any one of the Nationalized Bank, and release to such party, as the trial Court may deem it appropriately upon the conclusion of the trial.

(v) The documents of sale shall incorporate the fact that the vehicle is a case property and is required to be produced before the trial Court, as and when so directed, by filing an undertaking.

(vi) The transfer of ownership shall be subject to such orders that the trial Court or any other Court may pass on conclusion of trial.

(vii) The petitioner is entitled to get back RC Book from the Court, if deposited before the concerned Court, on filing of an affidavit.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,  
Padmanabhapuram
2. The Sub-Inspector of Police,  
Thuckalay Police Station,  
Kanyakumari District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
4. The Record Keeper,  
Vernacular Section  
Madurai Bench of Madras High Court. (2 Copies)

+1cc to M/S.G.Aravinthan, Advocate SR.No.40462.

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03.01.2018