



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.R.C(MD)No.532 of 2018

Senthilkumar

: Petitioner/Petitioner/
Accused No.1

Vs.

The State Rep by
The Inspector of Police,
Puthiamputhur Police Station,
Puthiamputhur, Thoothukudi District.
(Crime No.185/2017)

: Respondent/Respondent/
Complainant

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records pertain to the order passed in Crl.M.P.No.2644 of 2018 dated 06.08.2018 on the file of the Judicial Magistrate No.I, Thoothukudi and set aside the same and consequently modify the above order to that effect that the Interim Custody of Ashok Leyland (Tanker Lorry) bearing Registration No.TN 74-B-5969 to be granted to the petitioner even before the completion of investigation in Crime No.185 of 2017 on the file of the respondent police.

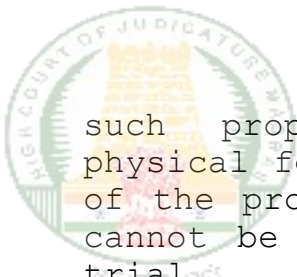
For Petitioner : Mr.T.Indrachithu

For Respondent : Mr.A.Robinson,
Government advocate (Crl.Side)

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl.Side) appearing for the respondent.

2.It is very disturbing that the judgment of Hon'ble Supreme Court rendered in Sunderbhai Ambalai Desai Vs. State of Gujarat reported in 2003 (1) CTC 175 has been grossly abused and misused by the offenders. In the said judgment, while analysing the provisions of Section 451 Cr.P.C., the Hon'ble Supreme Court has laid down certain guidelines to be followed while returning case property pending trial. The intention of the Apex Court is to ensure that the property seized shall not be put to waste by keeping it open to sky or locked in property room without being used. However when



such property is the tool for commission of the crime or if its physical features are likely to be altered, when the identification of the property is essential for proving the crime, this judgment cannot be indiscriminately applied to return the property pending trial.

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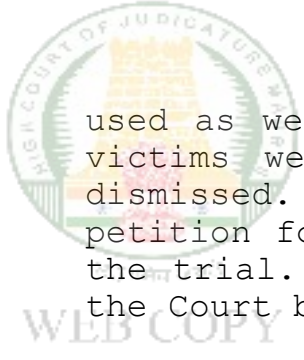
3. It is now brought to the notice of this Court that indiscriminate application of this judgment has lead to return of property to the accused persons or third parties, who claim the property and invariably violate or breach the undertaking given to the Court, to produce the property during the trial. This has lead to unnecessary acquittal of the accused persons for non-identification of the property or non- production of the property. It is high time to point out to the courts below that whenever the identification of property is very essential to prove the case, the judgment rendered in Sunderbhai Ambalai Desai's case has to be judicially applied.

4. In this case the tanker lorry which has been ordered to be returned to its owner after completion of the investigation. This vehicle according to the prosecution is the offending vehicle which has been used by the accused to restrain the victim proceeding in their car to attend the Court proceedings. Due to previous enmity, the accused persons used this tanker lorry to wrongfully restrain the victim proceeding in their car. When the occupants stopped their car and got down, they have been chased and stabbed. Two of them were killed, the other one which has witnessed the crime. He is the de-facto complainant.

5. In such circumstances, the trial Court has ordered to return the vehicle after completion of the investigation. When identification of the vehicle is very much essential to prove the case, merely on the ground that this vehicle is used for the livelihood of its owner who is one of the prime accused cannot be a reason to return the vehicle. Merely it may loss the market value due to exposure to sun and light also cannot be a reason to return the vehicle, if the return of vehicle may cause prejudice to the prosecution to prove the crime.

6. The learned counsel appearing for the petitioner would submit that another vehicle involved in the same crime has been ordered to be returned immediately without waiting for the completion of the investigation.

7. This Court perused that order and also the First Information Report. In the First Information Report, the vehicle which is now sought to be returned pending trial has been mentioned and it has been used for commission of crime. Whereas the other vehicle which is ordered to return not been mentioned in the First Information Report. The trial Court has thought fit that the vehicle can be returned subject to the conditions imposed. The same logical and analogical cannot be drawn for this tanker lorry which has been



used as weapon in this case to hit the four wheeler, in which the victims were travelling. Hence, this Criminal Revision Case is dismissed. The trial Court is hereby directed not to entertain the petition for return of this particular vehicle till the disposal of the trial. Any observation made in this order shall not prejudice the Court below, while deciding the main case on merits.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-I)

To

- 1.The Judicial Magistrate No.I,
Thoothukudi.
- 2.The Chief Judicial Magistrate,
Thoothukudi.
- 3.The Inspector of Police,
Puthiamputhur Police Station,
Puthiamputhur, Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.R.C(MD)No.532 of 2018
17.09.2018

CP
ES/SKN/RSK/SAR 1/08.11.2018/3P/5C