

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.07.2019
CORAM
THE HONOURABLE MR. JUSTICE P.N.PRAKASH
Crl.R.C.No.427 of 2019

Thirumanigandan
S/o.Perumal

... Petitioner

-Vs-

1. State rep. by
The Inspector of Police
Ammamet Police Station
Salem.

2. K.N.Venkatesan
S/o.C.Natarajan

... Respondents

* 2nd respondent is suo-moto impleaded
as per the order of this Court dated 13.06.2019
in Crl.RC.No.427 of 2019

Criminal Revision Petition filed under section 397
r/w 401 of the Code of Criminal Procedure to set aside
the order passed in CMP.No.606 of 2019 on the file of the
learned Judicial Magistrate No.5, Salem, dated 08.03.2019
and direct the respondent to return the property namely,
the TATA INDICA Car bearing Registration No.TN-10-AL-4548
belong to the petitioner.

For Petitioner : Mr.K.Pragadeesh Kumar

For Respondent : Mrs.Kritika Kamal.P

Government Advocate (Crl.Side)
for R1

O R D E R

This Criminal Revision Petition has been filed to
set aside the order dated 08.03.2019 passed in CMP.No.606
of 2019 on the file of the Judicial Magistrate Court
No.5, Salem, and to direct the respondent to return the
property namely, the TATA INDICA Car bearing Registration
No.TN-10-AL-4548 belonging to the petitioner.

2. Today, Mr.Ananthakumar, Assistant Commissioner of
Police, Law and Order, North Range, Salem City,
Mr.M.Krishnamoorthy, Inspector of Police, Ammapet Police
Station, Salem City and Mr.K.N.Venkatesan, the second
respondent, are present before this Court.

3. Heard the learned counsel for the petitioner and
the learned Government Advocate for the first respondent.

4. On 21.06.2019, this Court passed the following
order:
<https://hcservices.ecourts.gov.in/hcservices/>

"The Inspector of Police, Ammapet Police Station, is investigating the case in Ammapet Police Station Crime No.546 of 2018, initially registered for 'man missing' and later on altered to one under Section 387, 364, 302 and 201 I.P.C. During the course of investigation, it came to light that the accused involved in this case had abducted one Gopi and had murdered him. Subsequently, the police seized a Tata Indica car bearing Registration No.TN-10-AL-4548 and produced the same before the Judicial Magistrate No.V, Salem. Thirumanigandan, one of the accused in this case filed C.M.P.No.606 of 2019 in Crime No.546 of 2018 under Section 451 Cr.P.C. for return of the said vehicle. While dismissing the petition on 08.03.2019, the learned Judicial Magistrate No.V, Salem has made the following observation.

"It is also pertinent to note that already one K.N.Venkatesan, made petition as if he is the real owner of the vehicle that too in Sessions Case on the material evidence. The same was dismissed by this Court on 10.01.2019. Being material evidence in Sessions Case, this Court is not inclined to grant interim custody of the vehicle to the accused."

2. Therefore, this Court directed the police to bring Mr.K.N.Venkatesan for enquiry. Today, Mr.K.N.Venkatesan, S/o C.Natarajan appeared before this Court and stated that he had purchased the said car some time in the year 2013 and in the year 2018, he exchanged the car through M/s.Maansarovar Automobile Pvt Ltd., Porur, Chennai, for a new one, and he further categorically stated that he had not filed any petition for return of the property before the Judicial Magistrate No.V, Salem.

3. Mr.Bhaskaran, Sub Inspector of Police, Ammapet Police Station is also present in Court today. In view of the categorical assertion made by Mr.K.N.Venkatesan that he had not filed any petition for return of property before the Judicial Magistrate No.V, Salem, it has become imperative to conduct a thorough enquiry in this regard.

4. Therefore, this Court directs the Assistant Commissioner of Police (North),

Salem City, to conduct an enquiry as to who had filed the petition in the name of K.N.Venkatesan before the Judicial Magistrate No.V, Salem for the return of the said car. The report shall be filed before this Court on or before 12.07.2019. The Judicial Magistrate No.V, Salem is directed to furnish photocopies of all the necessary records to the Assistant Commissioner of Police (North), Salem City for the purpose of enquiry. The Judicial Magistrate No.V, Salem is also directed to send a photocopy of the petition and other documents filed by the said K.N.Venkatesan in a sealed cover to this Court. Mr.K.N.Venkatesan is directed to be present before this Court on 12.07.2019. List the matter on 12.07.2019 at 2.15 P.M."

5. Pursuant to the above order, Mr.Ananthakumar, Assistant Commissioner of Police, Law and Order, North Range, Salem City, has conducted enquiry and submitted a detailed report dated 12.07.2019, wherein it is stated as follows:

"3. I humbly submit that during the course of my enquiry I have examined Advocate Tr.Shanmugam, who has filed Vakalat, Affidavit and Petition before the learned Judicial Magistrate No.V Court, Salem, on the behalf of K.N.Venkatesan and recorded statement U/s 161(3) Cr.P.C. The said advocate Shanmugam stated that one Thirumanikandan, who is the alleged accused in Ammapet PS Cr.No.546/2018 had brought one person, who is so called K.N.Venkatesan. At the request of Thirumanikandan, Advocate filed petition before the learned Judicial Magistrate No.V Court, Salem, and in the Vakalat, Affidavit so called K.N.Venkatesan signed. The said advocate further stated that at the time of filing Vakalat before the learned Judicial Magistrate No.V Court, Salem, one advocate signed in the Vakalat + Affidavit in "Before me" column and doesn't know about the advocate, who are signed in Vakalat and Affidavit in "Before me" column.

4. I humbly submit that during the course of my enquiry, I have collected copy of Vakalat, Application and affidavit filed by advocate Shanmugam in the learned Judicial Magistrate No.V Court, Salem. I have compared the signature of

K.N.Venkatesan found in Vakalat and Affidavit with the K.N.Venkatesan signature found in the Transfer of Ownership form, even to naked eye, comparison of signatures reveals significant differences between the signatures of K.N.Venkatesan found in Vakalat, affidavit and signature of K.N.Venkatesan found in Transfer of Ownership form.

5. I humbly submit that during the course of my enquiry, I have also showed the signatures placed in Vakalat and Affidavit to K.N.Venkatesan. K.N.Venkatesan stated that he never signed Vakalat and affidavit and also denied his alleged signature placed in Vakalat and affidavit.

6. I humbly submit that during the course of my enquiry, I have perused the docket order of learned Judicial Magistrate No.V Court, Salem, after getting permission from the Hon'ble Court and it disclosed that the alleged petitioner K.N.Venkatesan has not at all appeared before the learned Judicial Magistrate No.V Court, Salem. Hence, the statement of advocate Shanmugam that K.N.Venkatesan had appeared before the learned Judicial Magistrate No.V Court, Salem, is false.

7. I humbly submit that during the course of my enquiry, I had examined Thirumanikandan and recorded statement U/s 161(3) Cr.P.C. The statement of Thirumanikandan disclosed that Thirumanikandan has not brought the K.N.Venkatesan to Salem for the purpose of taking interim custody of Tata Indica Vista Car bearing a registration No.TN-10-AL-4548 and also denied that K.N.Venkatesan had signed in the Vakalat and affidavit.

8. I humbly submit that after full-fledged enquiry, there is prima facie material to suspect the involvement of Tr.Shanmugam, advocate in the forgery of K.N.Venkatesan's sign before the learned Judicial Magistrate No.V, Salem."

6. This Court perused the statements recorded by Mr.Ananthakumar and the connected documents like photocopies of Vakalat, affidavit and Transfer Forms etc., that have been collected by him during enquiry. Thus, there are prima facie materials to show the

involvement of Shanmugam, advocate in the forgery of K.N.Venkatesan's signature.

7. In Iqbal Singh Marwah vs. Meenakshi Marwah (Constitution Bench) [(2005) AIR SCW 1929], the Supreme Court has held that the provision of Section 195 r/w 340 Cr.P.C will not apply where a document is forged outside the Court and filed as a part of the Court documents. In other words, Section 195 r/w 340 Cr.P.C. will come into play where the document, which is in the custody of the Court, is a forged one. The fact remains that imposter has been set up to file an application and take custody of the vehicle. In this case, the forgery has taken place outside the Court and thereafter, the fabricated documents have been filed. Hence, it will not necessary to resort to the procedure under Section 195 r/w 340 Cr.P.C.

8. Since the offences of impersonation and forgery are involved, this Court directs the Assistant Commissioner of Police, Central Crime Branch, Salem City, to register a suo-moto FIR, based on the enquiry report dated 12.07.2019 submitted by Mr. Ananthakumar, against Shanmugam and others, who are involved in the offences and proceed with the investigation in accordance with law.

9. Coming to the petition filed by the petitioner-Thirumanigandan seeking return of the vehicle, this Court is of the view that at this juncture, it may not be appropriate to give custody of the vehicle to the petitioner herein.

10. The learned counsel for the petitioner submitted that though the petitioner had purchased the car from M/s. Maansarovar Automobile Pvt. Ltd., Porur, Chennai, yet it stands in the name of its erstwhile owner K.N.Venkatesan. He further submitted that though K.N.Venkatesan, has executed the transfer forms, because of the pendency of the investigation in this case, he is not able to effect the name transfer.

11. It is made clear that the pendency of the investigation in this case shall not be a bar in effecting the transfer from the name of Venkatesan to the petitioner's name.

12. Mr. G. Murali, Manager, Maansarovar Honda Auto Terrace, a sister concern of M/s. Maansarovar Automobile Pvt. Ltd., Porur, Chennai, who is present before this Court stated that if the petitioner submits the original R.C. book and other documents related to the vehicle, they will be in a position to effect on-line transfer.

13. Accordingly, the petitioner is directed to submit necessary documents to Mr.G.Murali, Manager, Maansarovar Honda Auto Terrace, a sister concern of M/s.Maansarovar Automobile Pvt. Ltd., Porur, Chennai.

14. This Court places its appreciation to Mr.Ananthakumar, Assistant Commissioner of Police, Law and Order, North Range, Salem City, for conducting the enquiry with alacrity.

With the above observations, this Criminal Revision case is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.5, Coimbatore.
 2. do through The Chief Judicial Magistrate, Coimbatore
 3. The Assistant Commissioner of Police Central Crime Branch, Salem City.
 4. The Inspector of Police Ammapet Police Station Salem.
 5. The Public Prosecutor, High Court, Madras.
- CrI.RC.No.427 of 2019
A.SK(18/07/2019)