

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.837 of 2019

V.Senthil

..Petitioner/Defacto Complainant

Vs.

State Rep by
Inspector of Police,
Mangalamedu PS,
Perambalur District.
Crime No.496/2015

..Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., to call for the records relating to the order in Crl.M.P.No.4181 of 2019 dated 25.07.2019 made in C.C.No.4 of 2016 on the file of the Learned Judicial Magistrate Perambalur District, and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.S.Suresh

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

This Criminal Revision Petition has been filed by the petitioner, to call for the records, relating to the order in Crl.M.P.No.4181 of 2019, dated 25.07.2019 made in C.C.No.4 of 2016 by the Learned Judicial Magistrate Perambalur District, dismissing the petition for return of RC Book and to set aside the same, by allowing this Criminal Revision Petition.

2.The facts of the case, in a nutshell are that the petitioner herein is the Manager of SPK Transport, Export and Import Pvt. Ltd. having its registered office, at Thambu Chetty Street, Parrys Corner, Chennai and that on 20.09.2015, a trailer lorry, bearing Registration No.TN-04-AH-5297, belonging to the sister concern of the petitioner was stolen by unknown accused and the driver has informed the same to the company. The petitioner being the Manager of the Company, immediately rushed to the spot and after he enquired the driver, had lodged a complaint to the respondent police. Based on the said complaint, on the same day, the respondent had registered a case in Crime No.496 of 2015 under Section 379 of IPC. During the course of investigation, the said lorry was recovered on the same day. Thereafter, a petition was filed by the petitioner under Section 451 of Cr.P.C. for return of lorry. Interim custody of the lorry

in question was granted to the petitioner during the month of October 2018. However, the RC Book was retained by the Trial Court. Since the RC Book was required for other formalities a petition in Crl.M.P.No.4181 of 2019 had been filed by the petitioner before the Trial Court, seeking the relief to return the RC Book, which is in favour of the petitioner. The Trial Court had dismissed the said petition by the impugned order dated 31.08.2019. Hence, the present petition has been filed.

3.This Court heard the learned counsel on either side.

4.The learned counsel for the petitioner would submit that the petitioner is the Manager of SPK Transport, Export and Import Pvt. Ltd. which is a sister concern of M/s.Avilaa Exports Private Ltd. and that the trailer lorry in question is owned by M/s.Avilaa Exports Private Ltd. He would submit that P.K.Ravi Kumar, Director of M/s.Avilaa Exports Private Ltd. had appointed the petitioner as a Power of Attorney and based on the Power of Attorney given to the petitioner earlier, the lorry was returned to him. Thereafter since the RC Book was required for other formalities, the petition seeking return of RC Book was filed. Whereas, the Trial Court, observing that only the xerox copy of the unregistered special Power of Attorney has been produced and further that the same was not produced as an documentary evidence, had dismissed the petition. Further, the Trial Court had also held that the Power of Attorney was not executed in accordance with law. He would submit that the petitioner being the Manager of the Company, has been given a special Power of Attorney and only based on that the lorry in question was earlier returned and that there was no reason for the Learned Trial Judge to dismiss the petition stating that it was not executed in accordance with law and also doubting the bonafides of the petitioner. He would further submit in order to satisfy the Trial Judge another special Power of Attorney dated 16.09.2019 has also been executed by the owner of the lorry viz., the Director of M/s.Avilaa Exports Private Ltd, with attestation of a notary public authorising the petitioner and that the petitioner is prepared to produce it before the Court.

5.The learned Additional Public Prosecutor would submit that the trailer lorry in question had been earlier returned to the petitioner and the learned Judicial Magistrate had dismissed the present petition on the ground that the petitioner has not produced the original Power of Attorney and the same also not been adduced as an documentary evidence and not executed in accordance with law.

6.I have gone through the order passed by the learned Judge. The said lorry has been earlier returned to the petitioner, based on the Power of Attorney. However, the Learned Judge had

entertained a doubt that the Power of Attorney has not been registered in accordance with law by getting it attested by a notary public. Further, when the Learned Judge had questioned the counsel, he had informed the judge to dismiss the application and that it had irked the Learned Judge and thereby the Learned Judge has dismissed the petition. When the vehicle had been returned to the petitioner on an earlier petition placing reliance on the earlier Power of Attorney given to the petitioner, there was no need for the Trial judge to raise a suspicion and question with regard to the Power of Attorney. However, this Court is able to see that the conduct of the counsel had made the learned Judge to pass such an order. Now, it has been stated by the learned counsel for the petitioner that a fresh Power of Attorney dated 16.09.2019 had been executed by the owner of the lorry and it is also been duly attested by a notary public, in favour of the petitioner in order to satisfy the learned Trial Judge. The Counsel had further stated that the direction may be issued to the learned Trial Judge to accept the fresh Power of Attorney and return the RC Book.

7. In view of the above, the order passed by the Learned Judge dated 25.07.2019 in CrI.M.P.No.4181 of 2019 is set aside. The petitioner is directed to approach the Trial Court with the fresh Power of Attorney and the Trial Judge shall consider the same and pass orders for returning the RC Book on the same day after imposing appropriate conditions.

8. With the above directions, the Criminal Revision Case stands allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate, Perambalur District.
2. The Inspector of Police,
Mangalamedu Police Station, Perambalur District.

+1 cc to M/s.D.Gopal, Advocate Sr.No. 80368

AKM/21.09.19/3P-4C /

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