



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.R.C(MD)No.369 of 2019

Kathiravan ... Petitioner/Owner of the vehicle/Accused

Vs.

The Inspector of Police,
Thattarmadam Police Station,
Tuticorin District. ...Respondent/Respondent

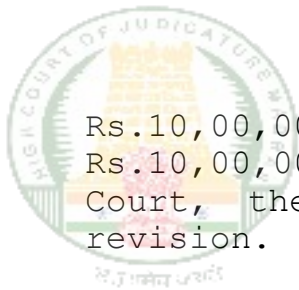
Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to modify the 1st condition alone in the order passed by the learned Judicial Magistrate, Sattankulam in Crl.M.P.No.4642 of 2019 dated 10.06.2019.

For Petitioner : Mr.G.Pradeep Dhinakaran
For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.side)

ORDER

This Criminal Revision Petition has been filed to modify the 1st condition imposed by the learned Judicial Magistrate, Sattankulam in the order passed in Crl.M.P.No.4642 of 2019 dated 10.06.2019.

2.The petitioner claims to be the owner of the Tipper Lorry bearing Registration No.TN-21-AX-9788. The Village Administrative Officer of Pallakurichi Village, Sathankulam Taluk, seized the alleged vehicle, which was standing near Ambal Kulam Road, Palakurichi Village, on 25.04.2019 at 6.00 p.m. and handed over the same to the respondent police on 26.04.2019. Thereafter, the respondent police registered a case in Crime No.71 of 2019 under Sections 379 and 511 of IPC. The petitioner filed an application before this Court in Cr.M.P.No.3987 of 2019 and the same was dismissed on 27.05.2019 as the Judicial Magistrate doesn't have inherent power to release the vehicle. The petitioner again filed the 2nd application before the learned Judicial Magistrate under Section 451 of Cr.P.C. and the same was order in Cr.M.P.No.4642 of 2019, dated 10.06.2019, by imposing the 1st condition to the effect that the petitioner/House Owner/accused has to produce



Rs.10,00,000/- and to produce two securities each worth for a sum of Rs.10,00,000/-. Challenging the 1st condition imposed by the trial Court, the petitioner is before this Court with this criminal revision.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The learned counsel appearing for the petitioner submitted that the learned Judge failed to note several identical cases in respect of release of Tipper Lorry, while imposing the 1st condition, by relying upon the order of the Principal Bench of this Court, dated 24.04.2017 made in CrI.M.P.No.3888 of 2017 in CrI.O.P.No.2891 of 2017 (Sagayam @ Devasagayam Vs. The Inspector of Police, G-7, Chetpet Police Station, Chennai. Now, the only grievance of the petitioner is that the 1st condition imposed by the learned Judicial Magistrate is onerous.

5. A careful perusal of the order of this Court, dated 24.04.2017 made in CrI.M.P.No.3888 of 2017 in CrI.O.P.No.2891 of 2017 (Sagayam @ Devasagayam Vs. The Inspector of Police, G-7, Chetpet Police Station, Chennai, would reveal that this court has imposed one of the conditions for releasing the vehicle, which would run thus:-

'17. While granting bail, the Court can direct the accused to execute bail bond. As per Section 440 Cr.P.C., the bond amount should not be excessive. When a person so directed to execute the bond either with surety or without surety is not able to furnish the sureties, then under Section 445 Cr.P.C., he has the option to offer cash security. But even then, it must be a reasonable amount. It should not be an arbitrary, excessive amount. It should not be in the nature of deprivation of grant of bail by fixing an heavy amount as surety amount. If heavy amount is directed to be deposited as cash security, the bailee/accused will not be in a position to comply it. If heavy amount is demanded from the surety, then the bailor will not be forthcoming. And 'haves' will go out, while 'have nots' will remain in jail.

18. Reading Sections 440, 441 and 445 Cr.P.C. together, it is clear that straightaway a Court cannot direct the accused to deposit cash security. First of all, the court has to direct execution of bail bond by the sureties in case if the release is not on his own bond. Only in lieu of that deposit of cash security could be directed (see Section 445 Cr.P.C.)

<https://hcservices.ecourts.gov.in/hcservices/> As already stated even if the cash security is ordered under Section 445 Cr.P.C., the Court must pay regard to the circumstances of the case and the



amount should not be excessive (see Section 440 Cr.P.C. Also see *State of Mysore vs. H. Venkatarama Kotaiyah* (1968 Cr.L.J.696), *Moti Ram and Others vs. State of Madhya Pradesh* [(1978) 4 SCC 47], *Babu Singh and Others vs. The State of U.P* (AIR 1978 SC 527), *Gokul Das vs. The State of Assam* (1981 Cr.L.J.229), *Afsar Khan vs. State of Karnataka* (1992 Cr.L.J.1676), *Bhikhabhai Udesinh Darbar vs. State of Gujarat* [(1998) 1 GLR 315], *Parades Patra and Another vs. State of Orissa* (1993 II OLR 452), *Sandeep Jain vs. National Capital Territory of Delhi* [(2000) 2 SCC 66], *Amarjit Singh Vs. State of NCT of Delhi* (JT 2002 (1) SC 291), *Sheikhh Ayub vs. State of Madhya Pradesh* [(2004) 13 SCC 457], *Ramathal and Others vs. Inspector of Police and another* [(2009) 12 SCC 721], *Amaldoss and others vs. The Inspector of Police, Patteeswaram Police Station, Thanjavur District* (Cr.L.O.P(MD)Nos.19196 and 19197 of 2014 dated 05.02.2015) and *Sakthivel and another vs. The Inspector of Police, Belukurichi Police Station, Namakkal District* (Cr.L.O.P.Nos.835 and 836 of 2015 dated 04.02.2015).''

6. Keeping in mind the above judgment passed by this Court in similar cases, this Court is inclined to modify the 1st condition passed by the trial Court.

7. In view of that, this Criminal Revision is allowed. The impugned order of the learned Judicial Magistrate, Sattankulam dated 10.06.2019 is modified in respect of the 1st condition alone to the effect that the petitioner shall produce a sum of Rs.25,000/- to the credit of Crime No.71 of 2019 on the file of the learned Judicial Magistrate, Sattankulam and also produce two securities each worth for a sum of Rs.25,000/-. In respect of other conditions, the order of the learned Judicial Magistrate shall remain unaltered.

Sd/-

Assistant Registrar (CS-II)

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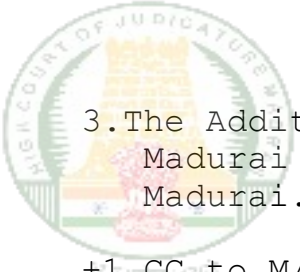
Sub Assistant Registrar (CS-)

vsd

To

1. The Judicial Magistrate, Sattankulam.

2. The Inspector of Police,
The Court of Sessions Police Station,
Tuticorin District.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.PRADEEP DINAKARAN, Advocate
(SR-70612[F] dated 21/06/2019)

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ES/28.06.2019/4P/5C