



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

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

Crl.RC.(MD)No.413 of 2019

Puthuaaru Financial Services Private Ltd.,
represented by its Chief Operating Officer,
C.Balaji

: Petitioner/Petitioner

Vs.

State represented by
The Inspector of Police,
Taluk Police Station,
Pattukottai, Thanjavur District.
(Crime No.122 of 2010)

: Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure against the order of the Judicial Magistrate, Pattukkottai, in Crl.M.P.No.6236 of 2011, dated 30.06.2011 and to set aside the 3rd and 4th conditions imposed in the said order.

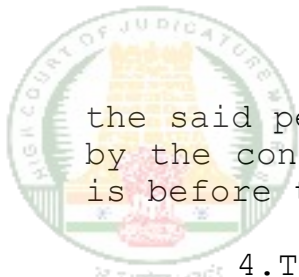
For Revision Petitioner : Mr.M.Karunanithi
For Respondent : Mr.APG Ohm Chairma Prabhu
Government Advocate
(Criminal Side)

O R D E R

This Criminal Revision is directed against the order of the Judicial Magistrate, Pattukkottai, passed in Crl.M.P.No.6236 of 2011, dated 30.06.2011 and to set aside the 3rd and 4th conditions imposed in the said order.

2.The petitioner is working as "Chief Operating Officer" in Puthuaaru Financial Services Private Limited at Udayasuriyapuram, Pattukkottai Taluk and on his complaint, a case in Crime No.122 of 2010 was registered for the offences under Sections 457 and 380 IPC by the respondent police on the ground that gold jewels worth about 5.90 Kilograms i.e., 738 sovereigns were stolen. During the course of the investigation, some of the accused involved in the crime had been arrested and some of the properties were recovered from them. The respondent police seized a Scorpio Car TN-07-AJ-6007 and produced the same before the Judicial Magistrate, Pattukkottai and the same was taken into custody in C.P.No.57 of 2011.

3.The petitioner filed an application in CMP No.6236 of 2011 under Section 451 for return of the said Car, before the Judicial Magistrate, Pattukkottai. The learned Judicial Magistrate allowed



the said petition on 30.06.2011 with certain conditions. Aggrieved by the conditions 3 and 4 imposed by the said court, the petitioner is before this court.

4.The learned counsel appearing for the petitioner submitted that the petitioner is the absolute owner of the vehicle and if they are allowed to sell the vehicle, they can get a fair price and if not till the end of the trial, the same would cause great hardship to them and the trial court has failed to consider the fact that the very purpose of taking photographs of the cash property is only to mark it during trial. In support of his contention, he relied upon the following decisions:-

(i)1995 SCC (Cri) 706 (Kineshwar Singh Vs. Hori Lal and another);

(ii)2011 CRI.L.J 3568 (Prabhakar Vaman Pishe Vs. State of Karnataka);

(iii)2003(1)CTC 175 (Sunderbhai Amabalal Desai Vs. State of Gujarat);

(iv)2013 CRL.I.J 854 (Ashok Kumar Vs. State of Kerala); and

(v)2016(2)TNLR 522 (MAD) (MD) (Ponnammal Vs. State).

5.The learned Government Advocate (Criminal side) appearing for the respondent/State submitted that the trial court has corrected passed the order imposing certain conditions and prays for dismissal of the criminal revision.

6.Heard both sides and perused the materials available on record.

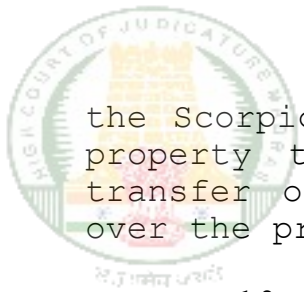
7.The main contention raised on the side of the revision petitioner is that the very purpose of taking photographs of the case property is only to mark it during trial and the 3rd and 4th conditions imposed by the trial court would amounts to dismissal of the petition and the very purpose and object of the order in return of of the property has been defeated by the 3rd and 4th conditions and viewing from any angle, the 3rd and 4th conditions are liable to be set aside. The 3rd and 4th conditions are not proper since there was no immediate prospect of trial and hence, directed to take photographs of the case property and deliver to the complainant unconditionally. For that, the learned counsel appearing for the petitioner submitted a ruling reported in **2001-CRI.L.J.3568 (Prabhakar Vaman Pishe Vs. State of Karnataka)**. In that case, it has been held as follows:-



"4.That apart, the scientific technology in photography has achieved tremendous progress. Hardly there is any object which can miss the eye of a camera. The present photographic techniques are quite substantially developed. The photo of any object can be taken which could reflect the designs, pattern, character and complexion of the property. The jewellery in this case, of course, could be a subject-matter of photography and by proper photographs from different dimensions, the pattern, character, the facet and the type of the jewellery can be very well taken. The said photographs can be used as a secondary evidence. Therefore, any of the properties which could be a successful subject-matter of photography, the photos of which be taken and to be made a part of the record. Even at the time when interim custody is granted. When the accused is absconding, it is indefinite about the probable time frame in which the case could be concluded, the properties be given to the victim or the complainant sans any onerous condition of maintaining status quo, more so when the investigating material or the evidence adduced as the case may be supports the claim of the victim. However to ensure the proper accountability of the value of the property, necessary indemnity bonds could be taken. Even if the property is not produced, the secondary evidence can be used in evidence and ultimately at the conclusion of trial if it is found that the victim or the complainant is not entitled to possession and that the accused is entitled to possession, the complainant may be directed to pay the value of the property. In order to ensure the assessment of the proper value, due care should be taken by the Trial Courts in getting the value of the property properly assessed and necessary indemnity bonds to be taken from the victim or complainant if necessary with sureties for recovery of the value."

8.In this case, the petitioner filed a petition praying for interim custody of the case property namely TN-07-AJ-6007 Scorpio Car connected in CP No.57 of 2011 and the trial court allowed the petition with some conditions. The petitioner challenged the 3rd and 4th conditions imposed by the trial court in this revision.

9.The learned Government Advocate (Criminal side) appearing for the respondent/State submitted that A2 was arrested and on the basis of the confession given by A2, it reveals that the disputed vehicle was purchased by way of selling the stolen jewels and once



the Scorpio Car was purchased from the sale proceeds of the stolen property then the Car was not subjected to sell or change or transfer of ownership and the petitioner cannot claim only right over the property till the disposal of the case.

10.In this case, according to the complaint, the stolen gold jewels weighing about 5.90 Kgs and only for that, the complaint was given while stolen. A2 was arrested and he gave confession and on the basis of the confession, a Scorpio Car, which was purchased by selling of the stolen gold jewels was seized by the respondent police. The petitioner filed this petition to return the above Car, which was allowed by the trial court with some conditions. At the time of trial only, it will be decided whether by way of selling the stolen jewels, the alleged Scorpio Car was purchased or not. At this stage, it cannot be decided. Further, the production of Scorpio Car is very essential at the time of marking the Car. Hence, the 3rd and 4th conditions imposed by the trial court are very much necessary. Therefore, the reasons stated by the petitioner in the petition is not acceptable.

11.For all the reasons stated above, this court is of the considered view that the impugned order passed by the trial court does not call for any interference by this court.

12.In the result, the criminal revision fails and the same is dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate,
Pattukottai, Thanjavur.
2. The Inspector of Police, Taluk Police Station,
Pattukottai, Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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