



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on: 25.11.2019

Delivered on: 28.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Cr1.Rc(MD)Nos.446 and 473 of 2019

and

Cr1.M.P(MD)No.6457 of 2019

Cr1.Rc(MD)No.446 of 2019:

T.Nithin Petitioner/Petitioner/Defacto Complainant

- Vs -

1.State Rep. By

The Inspector of Police,
Colachel Police Station, Colachel,
Kanyakumari District.
(In Crime No.59 of 2019)

... Respondent / Respondent / Complainant

2.Yesudhasan

... Respondent / Respondent / Accused No.1

PRAYER: Criminal Revision Case filed u/s 397 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 03.07.2019 made in C.M.P.No.3830 of 2019 on the file of the Principal District Munsif-cum-Judicial Magistrate, Eraniel in Crime No.59 of 2019 on the file of the 1st respondent police and set aside the same and further directed the 1st respondent to return the petitioner's Mini Bus bearing Registration No.TN 74-Y 4063.

For Petitioner : Mr.A.C.Asaithambi

For R-1 : Mrs.M.Anantha Devi,
Government Advocate(Crl. Side)

For R-2 : Mr.K.N.Thambi

Cr1.Rc(MD)No.473 of 2019:

Yesudhasan Petitioner/Petitioner/1st Accused

- Vs -



1.The State of Tamil Nadu,
Through the Inspector of Police,
Colachel Police Station,
Colachel,
Kanyakumari District.
(In Crime No.59 of 2019)

2.T.Nithin ... Respondents / Respondents /
Complainant and Defacto Complainant

PRAYER: Criminal Revision Case filed u/s 397 and 401 of the Code of Criminal Procedure, to call for the records of the learned Principal District Munsif-cum-Judicial Magistrate of Eraniel in Cr1.M.P.No.3587 of 2019 in Crime No.59 of 2019 on his file, set aside the order dated 03.07.2019 and to allow the said M.P.

For Petitioner : Mr.K.N.Thambi

For R-1 : Mrs.M.Anantha Devi,
Government Advocate(Crl. Side)

For R-2 : Mr.A.C.Asaithambi

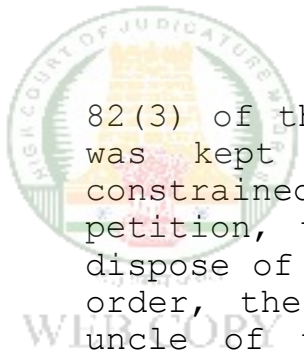
COMMON ORDER

Both the Criminal Revision Cases raise common issues and grounds. Hence, they are taken up together for disposal as under.

2. The Criminal Revision Cases have been filed against similar orders passed by the learned Principal District Munsif-cum-Judicial Magistrate, Eraniel in C.M.P.No.3890 of 2019 and C.M.P.No.3587 of 2019, dated 03.07.2019, dismissing the petitions filed by both the revision petitioners for return of the vehicle ie., the Mini Bus bearing Registration No.TN 74-Y 4063.

3.The facts, which gave rise to the filing of the present criminal revision case in Cr1.Rc(MD)No.446 of 2019 are briefly stated hereunder.

4. The revision petitioner herein was having two Mini Buses bearing Registration Nos.TN 74-Y 2747 and TN 74-Y 4063. These Mini Buses originally belonged to one Pankiraj, who was none other than the grandfather of the revision petitioner. He executed a settlement deed on 22.11.2016 in favour of the revision petitioner and handed over the two Mini Buses. Immediately after that, he died on 15.03.2017. His death was duly intimated to the Regional Transport Authority, Nagercoil by the revision petitioner on 03.04.2017 as per Section 82(2) of the Central Motor Vehicles Act, 1988. Thereafter, an application was filed for transfer of permit before the Regional Transport Authority on 27.04.2017 as per Section

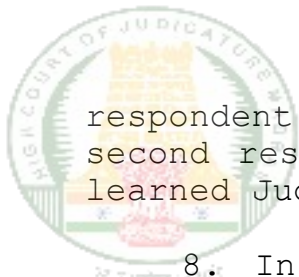


82(3) of the Central Motor Vehicle Act, 1988. The said application was kept pending and therefore, the revision petitioner was constrained to file W.P(MD)No.11401 of 2017. In the said writ petition, this Court directed the Regional Transport Authority, to dispose of the application for transfer of permit. Against the said order, the second respondent herein, who was none other than the uncle of the revision petitioner ie., the revision petitioner's father's brother filed a recall petition in W.M.P(MD)No.13367 of 2017 and this Court has also recalled the order. Against which, the revision petitioner filed a writ appeal in W.A(MD)No.1412 of 2017 and by judgment dated 07.12.2017, the Division Bench of this Court disposed of the writ appeal, directing the Regional Transport Authority to pass order on the transfer application.

5. Thereafter, the Regional Transport Authority, rejected the request for transfer of permit on 01.10.2018. Against the said rejection order, a writ petition was filed in W.P(MD)No.21095 of 2018 and by order dated 10.12.2018, this Court directed the Regional Transport Authority to effect the transfer of permit. The Regional Transport Authority transferred the two Mini Buses by proceedings dated 05.03.2019 in favour of the revision petitioner and directed the revision petitioner to produce all the records along with vehicles within four months from the date of the order. The revision petitioner produced one Mini Bus bearing Registration No.TN 74-Y 2747 and the R.C. Book transferred in the name of the revision petitioner. The other Mini Bus bearing Registration No.TN 74-Y 4063 could not be produced by the petitioner, because the same was forcibly taken by the second respondent herein.

6. In the above circumstances, a complaint was lodged by the revision petitioner against his uncle ie., the second respondent herein for stealing the vehicle from his custody on 13.10.2018 to the first respondent herein. Since no action was taken, the revision petitioner filed a direction petition before the learned Judicial Magistrate, Eraniel in Cr1.M.P.No.898 of 2019. The learned Judicial Magistrate, in response to the said petition, directed the first respondent police to register a case if cognizable offence was made out. In pursuance of the said direction, the first respondent registered a case in Crime No.59 of 2019 against the second respondent under Sections 147 and 379 of I.P.C.

7. In the meanwhile, the second respondent challenged the settlement deed executed in favour of the revision petitioner dated 22.11.2016 before the District Court, Kanyakumari in O.S.No.47 of 2017 and the civil suit is pending and no interim orders were passed in the civil suit. While the matter stood thus, the revision petitioner is unable to produce one Mini Bus, which is in the custody of the second respondent herein, despite the directions issued by this Court on 10.12.2018. In these circumstances, the revision petitioner once again approached this Court and filed



respondent to seize the Mini Bus, which is in the custody of the second respondent on 24.06.2019 and hand over the same before the learned Judicial Magistrate.

8. In pursuance of the said direction, the first respondent recovered the Mini Bus from the second respondent and the same was handed over to the custody of the learned Judicial Magistrate and the revision petitioner thereafter approached the learned Judicial Magistrate and filed C.M.P.No.3830 of 2019 for return of the vehicle and the same was rejected by the learned Judicial Magistrate on the ground that there are two claimants claiming ownership to the vehicle in question and that there are cases pending in regard to the ownership of the vehicle both before the civil Court as well as before the High Court and till the result of those cases, the vehicle cannot be handed over to either of the parties. The said rejection is subject matter of revision before this Court.

9. As far as the facts of Cr1.Rc(MD)No.473 of 2019 is concerned, it is filed by the revision petitioner, who is shown as the second respondent in Cr1.Rc(MD)No.446 of 2019 and the petitioner in Cr1.Rc(MD)No.446 of 2019 is shown as second respondent in this criminal revision case.

10. According to this revision petitioner, the vehicle was not actually stolen. It was in his original custody. But, it was actually the revision petitioner in Cr1.Rc(MD)No.446 of 2019, who had stolen the R.C. Book and taken xerox copy of the same and got the permit transferred in his name by the Regional Transport Authority. According to this revision petitioner, his father has already relinquished his right in respect of the Mini Buses in favour of him as early as on 01.02.2012 and in the document, it was attested by the second respondent's father himself. Therefore, he would submit that the claim of the second respondent ie., the revision petitioner in Cr1.Rc(MD)No.446 of 2019 that the Mini Buses were settled in his favour vide settlement deed dated 22.11.2016 was contrary to fact and the same was utter falsehood. According to this revision petitioner, the second respondent herein ie., the petitioner in Cr1.Rc(MD)No.446 of 2019, has obtained certain directions from this Court without mentioning the actual facts.

11. The learned counsel appearing for the petitioner in Cr1.Rc(MD)No.446 of 2019 would submit that the settlement deed dated 22.11.2016 clearly gives authority to the petitioner herein to succeed to the estate of his grandfather in respect of two Mini Buses. When he approached this Court in W.P(MD)No.21095 of 2018, this Court has disposed of the writ petition by a very detailed order on 10.12.2018. The said writ petition was filed by the revision petitioner in Cr1.Rc(MD)No.446 of 2019, when the Division Bench has directed the Regional Transport Authority to dispose of the transfer application, which came to be rejected vide order dated 04.01.2019. While dealing with the rejection order, this Court has



passed a detailed order and the learned counsel would draw the attention of this Court to paragraph Nos.3 to 8, which are extracted hereunder:

"3.The third respondent has filed a detailed counter affidavit. The learned counsel appearing for the third respondent contended that the third respondent has filed a civil suit in O.S No.47 of 2017 before the District Judge, Nagercoil challenging the settlement deed based on which the writ petitioner is now claiming rights. It is still pending. He also contended that as per Rule 214 of Tamil Nadu Motor Vehicles Rules, 1989, No Objection Certificate from all legal heirs other than the applicant is required. In as much as the said requirement was not satisfied, the order impugned in this writ petition deserves to be sustained. He also contended that one of the two buses is very much lying in his custody and physical possession. Therefore, the writ petitioner cannot claim that he succeeded to the possession of the vehicles. The third respondent also drew the attention of this Court to the previous conduct of the writ petitioner in trying to obtain an order from this Court behind his back.

4.No doubt, the contentions urged by the learned counsel appearing for the third respondent are strong and weighty. But then, this Court cannot lose sight of the fact that even though Pankiraj passed away as early as on 15.03.2017, the third respondent did not file any application seeking transfer of permit in his name. This writ petition was filed on 06.10.2018. In the meanwhile, the matter had seen one round of litigation. The fact that the third respondent did not choose to file any transfer application by itself indicates that the third respondent is not interested in keeping the permit alive.

5.As rightly contended by the learned counsel appearing for the petitioner the convenience of the travelling public will have to be taken note of. These are mini buses. In more or less similar situation, the Hon'ble Madras High Court in WP No.9633 of 1984 observed as follows :

"The resulting position is that the permits all stand in the name of dead persons. If such a



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situation is allowed to continue, then, it is very likely that by the time the disputes between the parties are either settled or adjudicated upon, the buses, if by, plying on the routes, or even the permits with reference to the several routes may become useless, especially when, even according to the petitioner, the buses are off the road and nobody is operating on the routes in question and that may lead to cancellations of the permits for non-performance. Such a situation cannot therefore be allowed to be brought about on account of the disputes between the parties since the transport service is basically intended for the convenience of the travelling public and many important routes as detailed in the "C" Schedule to the point cannot be allowed to be cancelled for non-performance resulting in enormous difficulties for the member of the public, who are obliged to travel on those routes. Bearing in mind the need to preserve the permits and prevent their cancellation for non-performance and also taking into account the convenience of the travelling public, it appears to me very just and equitable that for the time being at least, there should be a transfer of all the permits in favour of the respondents 3 to 6 as prayed for by them. The learned counsel for the respondents 3 to 6 was repeatedly asked whether if such a transfer of the permits is effected in their favour, they would hold those permits so transferred not only for their own benefit, but also for the benefit of others, who either earlier or hereafter might have been or may be declared to have an interest or share therein, the learned counsel assured this court that respondents 3 to 6 would so hold the permits when transferred. In view of this, the first respondent is directed to transfer all the permits referred to in his notice R.No.9664/A5/84- dated 16.05.1984 in favour of respondents 3 to 6 in this writ petition. However, it is made very clear that this transfer is only with a view to preserve the buses as well as to protect the permits, so that they may not be lost or cancelled for non-performance."

In the decision reported in 1989 Writ L.R.391 (K.Vediammal vs. The Regional Transport Authority), the aforesaid decision in WP No.9633 of 1984 was followed. Both these decisions were followed and relief was granted to the applicant in



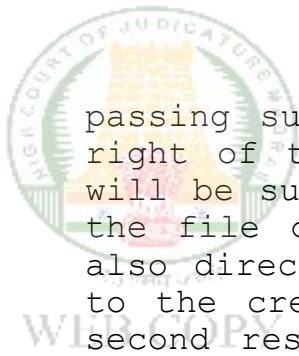
WP Nos.620, 621 and 14801 of 2007 dated 30.04.2010.

6.I too feel inclined to adopt the same course of action. The third respondent no doubt has initiated a civil suit questioning the very validity of the settlement deed said to have been executed in favour of the writ petitioner. But then, no interim order has been granted in the said civil suit. But, at the same time, the present proceedings will have to abide by the outcome of the civil suit. This Court called upon the writ petitioner to indicate his willingness to act like a party receiver. The learned counsel appearing for the writ petitioner answered in the affirmative. The learned counsel for the writ petitioner submitted that the petitioner will deposit 50% of the net profits to the credit of O.S No.47 of 2017 on the file of the District Judge, Nagercoil.

7.Recording the said undertaking and respectfully following the decisions of the Hon'ble Madras High Court referred to above, I am of the view that in the interest of the travelling public and to preserve the permits in question, the order impugned in this writ petition deserves to be quashed. It is accordingly quashed. The first respondent is directed to effect transfer on the permits in question in favour of the writ petitioner within a period of three weeks from the date of receipt of a copy of this order. The writ petitioner shall however hold the same not only for his benefit but for the benefit of the other legal heirs. Of course, this will be subject to the outcome of O.S No.47 of 2017 on the file of the District Judge, Nagercoil. It is open to the third respondent to verify the accounts submitted by the writ petitioner. It is also open to the civil court to pass appropriate directions in that regard.

8.With these directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed."

12. According to the learned counsel, the learned Judge of this Court has directed to effect transfer in favour of the revision petitioner herein within a period of three weeks by quashing the rejection order passed by the Regional Transport Authority. While

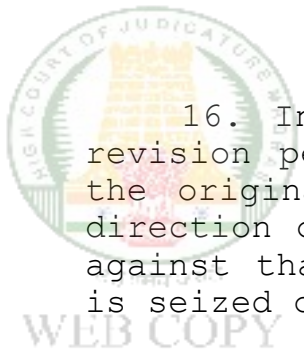


passing such an order, the learned Judge has also protected the right of the second respondent herein by observing that the order will be subject to the outcome of the suit in O.S.No.47 of 2017 on the file of the District Judge, Nagercoil. The learned Judge has also directed that the petitioner shall deposit 50% of net profits to the credit of O.S.No.47 of 2017 and it was left open to the second respondent herein to verify the accounts submitted by the revision petitioner herein. While protecting the rights of both parties, the said direction was issued. While so, when the revision petitioner approached the learned Judicial Magistrate for return of the vehicle in terms of the passed by this Court on 10.12.2018 in W.P(MD)No.21095 of 2018, the learned Judicial Magistrate dismissed the petition on the ground that suit in O.S.No.47 of 2017 is pending on the file of the civil Court and also a writ appeal is pending against the order passed by the learned Single Judge in W.P(MD)No.21095 of 2018, dated 10.12.2018.

13. The learned counsel would further submit that in neither of the Court, there was an interim order affecting the rights of the revision petitioner herein. In such event, the learned Judicial Magistrate ought to have allowed the petition for return of the vehicle. But unfortunately, the learned Judicial Magistrate without true reference to the directions issued by this Court has overlooked the orders passed by this Court.

14. Per contra, the learned counsel appearing for the second respondent, who is the petitioner in Cr1.Rc(MD)No.473 of 2019 would strongly oppose grant of relief to the revision petitioner herein. He would submit that the settlement deed obtained by the revision petitioner was a sham one and in fact, in the year 2012 itself, his father ie., the grandfather of the petitioner had relinquished his right in favour of the second respondent in February 2012 and in the said document, the father of the revision petitioner in Cr1.Rc(MD) No.446 of 2019 was also a signatory. Moreover, he would submit that when the suit is pending questioning the settlement deed, the settlement deed cannot be acted upon and it was only under the settlement deed, the revision petitioner claims his right to the two Mini Buses. He would further add that when the writ petition was pending ie., W.P(MD)No.21095 of 2018, it was not brought to the knowledge of this Court about the one Mini Bus being stolen and not in his custody and without disclosing this fact, he has managed to obtain the order.

15. The learned counsel would also submit that being a son of original owner, he was entitled to the property and therefore, the learned Judicial Magistrate ought to have returned the vehicle to him. But unfortunately, he has rejected the application on the same grounds as that of the revision petitioner's application for return of the vehicle.



16. In any case, the learned counsel would submit that when revision petitioner is not entitled for return of vehicle and let the original suit be decided between the parties. As regards the direction of this Court in W.P(MD)No.21095 of 2018 is concerned, as against that, a writ appeal has been filed and the Division Bench is seized of the matter in W.A(MD)No.1716 of 2018.

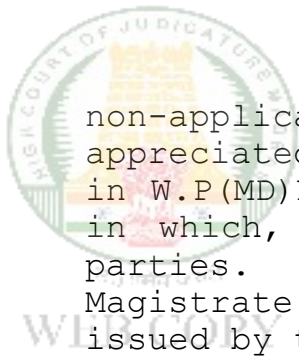
17. He would in all submit that the revision petition filed by the revision petitioner in Cr1.Rc(MD)No.446 of 2019 has no merits and the same is liable to be dismissed.

18. On behalf of the first respondent, in both the cases, the learned Government Advocate(Crl. Side) has made her submissions. According to her, the learned Magistrate has taken a right decision in rejecting the applications filed by both the revision petitioners since the cases are pending as between the parties, which would ultimately decide as to who is the actual owner of the vehicle. Till that time, the vehicle if returned, it will affect the right of one of the parties. Therefore, she would submit that the order passed by the learned Magistrate does not call for any interference by this Court.

19. This Court considered the submissions made by the learned counsels for the parties in both the criminal revision cases.

20. From the above narration of facts, it could be seen that the grandson of the original owner of the vehicles in question, the revision petitioner in Cr1.Rc(MD)No.446 of 2019 has based his claim as a settlement deed which was executed in his favour on 22.11.2016 in respect of two Mini Buses. Of course, the validity of the said deed is being questioned by his uncle in O.S.No.47 of 2017 before the competent civil Court. But, the uncle has not secured any interim order protecting his right in the interregnum. At the same time, the revision petitioner in Cr1.Rc(MD)No.446 of 2019 has approached this Court in W.P(MD)No.21095 of 2018 and obtained a detailed direction from this Court vide its order dated 10.12.2018. The extensive portion of the order, which is extracted supra would clearly clinch the case in favour of the revision petitioner at least till the suit is decided one way or the other between the parties. This Court has given a clear direction for transfer of the vehicle in favour of the petitioner therein and the Regional Transport Authority in pursuance of the same has passed the proceedings, directing the writ petitioner to produce the Mini bus in question, the same could not be complied with, since it was in the custody of the learned Judicial Magistrate. Therefore, an application was filed for return of the vehicle, the same was unfortunately rejected on the ground that suit was pending between the parties and writ appeal also pending before this Court.

21. This Court is unable to appreciate as to how the learned
<https://www.madrasbar.org/> reject the application, which would only reflect



non-application of mind. The learned Judicial Magistrate should have appreciated the directions given by the learned Judge of this Court in W.P(MD)No.21095 of 2018, dated 10.12.2018 in proper perspective, in which, the learned Judge has protected the interest of rival parties. Unfortunately, it appears that the learned Judicial Magistrate has wittingly and unwittingly overlooked the directions issued by this Court.

22. This Court finds that the learned Judge has while passing the order in extenso has protected the rights of both parties and he has also taken into consideration the public interest involved in plying the bus in certain areas. While that being so, this Court is unable to appreciate as to what precluded the learned Magistrate from releasing the Mini Bus in favour of the revision petitioner in Cr1.Rc(MD)No.446 of 2019. Simply because there was a pending suit between the parties and also a writ appeal, where the second respondent herein failed to get any interim orders, it is not correct on the part of the learned Judicial Magistrate to cite that as a reason for rejecting the claim of the revision petitioner herein.

23. As far as the return of vehicle at the instance of the second respondent in Cr1.Rc(MD)No.446 of 2019 is concerned, it could be understood that the second respondent did not have directions in support of his claim like the revision petitioner had and therefore, his application was rightly rejected by the learned Judicial Magistrate. But, the same thing cannot be held to be valid as far as the present revision petitioner in Cr1.Rc(MD)No.446 of 2019, is concerned.

24. Once this Court has chosen to give a direction to the Regional Transport Authority for effecting change of permit and on the basis of which, the learned Judicial Magistrate passed proceedings in March 2019 and when the revision petitioner was required to produce the vehicle for effecting the change, it is incumbent on the part of the learned Magistrate to release the vehicle in his favour. This is particularly when the parties' interest are protected by the clear directions by this Court in its order dated 10.12.2018. This Court finds that the learned Magistrate has misdirected himself by simply overlooking the crucial factors in favour of the revision petitioner herein.

25. This Court in view of the cumulative facts as narrated above, is of the considered view that the balance of convenience as on date is in favour of the petitioner herein ie., the revision petitioner in Cr1.Rc(MD)No.446 of 2019 and the rejection order passed by the learned Magistrate in C.M.P.No.3830 of 2019 dated 03.07.2019 is liable to be interfered with.



26. On the other hand, the rejection order passed by the learned Magistrate, dated 03.07.2019 in respect of C.M.P.No.3597 of 2019 is liable to be upheld.

27. For the above said reasons, Cr1.Rc(MD)No.446 of 2019 is allowed and the order dated 03.07.2019 passed in C.M.P.No.3830 of 2019 by the learned Principal District Munsif-cum-Judicial Magistrate, Eraniel, is hereby set aside and the learned Magistrate is directed to release the Mini Bus bearing Registration No. TN 74 Y 4063 to the petitioner forthwith by allowing the C.M.P.No.3830 of 2019. No Costs.

28. As far as the other dismissal order passed in C.M.P.No.3597 of 2019 is concerned, this Court finds that the criminal revision case in Cr1.RC(MD)No.473 of 2019, is having no merits and the same is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Principal District Munsif-cum-Judicial Magistrate,
Eraniel.

2.The Inspector of Police,
Colachel Police Station, Colachel, Kanyakumari District.

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

+1CC TO MR.A.C.ASAITHAMBI, Advocate Sr. No. 102241

+2CC TO MR.K.N.THAMPI, Advocate Sr. No. 102487 & 102488

**PRE-DELIVERY ORDER MADE IN
CRL. RC. (MD) Nos.446 and 473 of 2019
28.11.2019**

DB(CO)

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