



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 19.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 637 OF 2019

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V.Saravanan

.. Petitioner/Petitioner-Third Party

- Vs -

1. The State, rep. by

The Sub Inspector of Police

Thirupanandal Police Station

Thanjavur District.

(Crime No.103/2019)

... Respondent/Complainant

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure against the order dated 02.07.2019 made in Cr. M.P. No.2521 of 2019 on the file of the Judicial Magistrate No.I, Kumbakonam, Thanjavur District.

For Petitioner : Mr. S.Deenadayalan

For Respondent : Ms. M.Anantha Devi, GA (Crl. Side)

ORDER

This revision petition is preferred against the order dated 02.07.2019, made in Crl. M.P. No.2521 of 2019, on the file of the learned Judicial Magistrate No.I, Kumbakonam, dismissing the petition filed by the petitioner u/s 451 Cr.P.C. for return of the vehicle.

2. It is the case of the petitioner as put forth not only in the petition, but also through the submission of the learned counsel for the petitioner, that the petitioner is the owner of the vehicle, bearing Registration No.TN-20-AK-6678, a tipper lorry, bearing Chassis No.LNE648912 and Engine No.LNH527991, which was seized by the respondent police on 15.4.2019 in respect of the offence u/s 397 IPC r/w 21 (2) of the Mines & Minerals (Development & Regulations) Act. It is the case of the petitioner that the number plate of the lorry was changed by the persons who had stolen the vehicle and it was used for illegal transportation of river sand, which is evident from the confession of the arrested persons. However, the court below, has not appreciated the materials in proper perspective and has dismissed the application filed for release of the vehicle, which was seized by the respondent police and is under their custody. Further, the vehicle is kept in open places, which erodes the value of the vehicle and over a period of time, if it is not



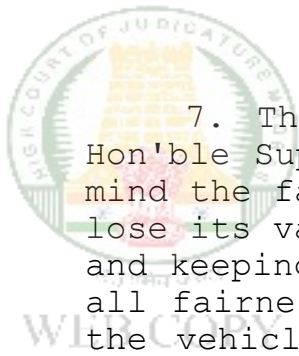
maintained, the vehicle would become valueless. Therefore, the present revision has been preferred before this Court.

3. Per contra, learned Government Advocate (Crl. Side) submitted that the vehicle of the petitioner has been seized in Crime No.148/2019 on the file of Velayuthampalayam Police Station and is not relatable to the present crime number. However, it is submitted that if the vehicle is released to the petitioner, the petitioner may alienate the vehicle and, thereby, the said act would be very detrimental to the prosecution case, in Crime No.148/2019, which fact has been considered by the court below and, therefore, no interference is called for with the said order. It is also further contended that the order, passed u/s 451 Cr.P.C. Is an interlocutory order and in view of the bar u/s 397 (2) Cr.P.C., the revision is not maintainable. However, it is submitted by the learned Government Advocate (Crl. Side), that the vehicle of the petitioner, with the chassis and engine number as covered in Regn. No.TN-20-AK-6678 is not relatable to the present crime number relating to illegal transportation of river sand, but pertains to Crime No.148/2019 on the file of Velayuthampalayam Police Station.

4. This Court bestowed its best attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

5. The bar imposed u/s 397 (2) Cr.P.C. against filing of revision against an interlocutory order is no longer *res integra* in view of the decision of this Court in the case of **V.Vinoth - Vs - The State (Crl. R.C. No.1152/2018 dated 17.12.2018)**, wherein this Court has extensively considered the said argument and held that revision is maintainable against the order passed u/s 451 Cr.P.C., as the same is not interlocutory in nature, but such order determines the constitutional rights of the petitioner for return of properties or for disposing of properties.

6. A perusal of the order passed by the court below reveals that based on the apprehensions expressed by the respondents herein, the court below had dismissed the plea for return of the vehicle. It is to be borne in mind that the movable property, viz., the vehicle, which is the subject matter of release, is kept in an open place, which is not in dispute. So definitely, there is bound to be erosion due to natural factors, thereby increasing the depreciable value of the vehicle. Therefore, in the above scenario, the balance of convenience definitely tilts in favour of the petitioner for return of the vehicle. Further, this Court is also conscious of the fact that the vehicle sought to be released is not relatable to the crime relating to illegal transportation of river sand, but is relatable to some other crime number.



7. This Court, taking cue from the observations made by the Hon'ble Supreme Court in a catena of decisions, and also keeping in mind the fact that the property, which is sought to be returned will lose its value and ultimately would be of no use to any stake holder and keeping the property in the custody of the respondent police, in all fairness and fitness of things, pending trial or investigation, the vehicle, as far as possible, shall be returned to the owner. Therefore, this Court is of the considered view, that the vehicle in the present case, bearing Regn. No.TN-20-AK-6678, which is the subject matter of impugned order dated 02.07.2019, made in Cr.M.P.No.2521 of 2019 on the file of the Judicial Magistrate No.I, Kumbakonam, should be released.

8. Accordingly, this criminal revision case is allowed setting aside the order dated 02.07.2019, made in Cr.M.P.No.2521 of 2019 on the file of the Judicial Magistrate No.I, Kumbakonam. The vehicle, bearing Regn. No.TN-20-AK-6678, which is covered under Cr.M.P. No.2521 of 2019 on the file of the Judicial Magistrate No.I, Kumbakonam, is ordered to be released within a period of one week from the date of receipt of a copy of this order, subject to the following conditions :-

i) The petitioner shall produce necessary documents before the respondent to establish ownership of the vehicle in question;

ii) The petitioner shall deposit the RC Book in the custody of the Judicial Magistrate Court No.I, Kumbakonam, Thanjavur District, till the conclusion of the trial;

iii) The petitioner shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) before the Judicial Magistrate Court No.I, Kumbakonam, Thanjavur District, as non-refundable deposit;

iv) The petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future and shall produce the same as and when required by the respondent for the conduct of the trial;

v) The petitioner shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned;

vi) The petitioner shall not alter the physical characteristics of the vehicle and shall maintain the vehicle in as is where is condition till the disposal of the proceedings before the authority concerned; and



vii) *The petitioner shall extend full cooperation by producing the vehicle as and when required at the time of trial."*

Sd/-

Assistant Registrar

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// True Copy //

Sub Assistant Registrar (CS)

GLN

To

- 1) The Judicial Magistrate Court No.I
Kumbakonam, Thanjavur District.
- 2) The Sub Inspector of Police
Thirupanandal Police Station
Thanjavur District.
- 3) The Addl. Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1 CC to Mr.S.DEENADHAYALAN, Advocate (SR-99515[F] dated 19/11/2019)

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19.11.2019**

MK (26.11.2019) 4P 5C