

**BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT****DATE : 17.10.2019****CORAM****THE HONOURABLE MR. JUSTICE V.PARTHIBAN****CRL. R.C. (MD) NO. 742 OF 2019**

Kathiresan

.. Petitioner

- Vs -

The State, rep. by
Sub Inspector of Police
Dindigul Town North Police Station
Dindigul District.

.. Respondent

PRAYER: Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure against the order dated 05.09.2019 made in Cr. M.P. No.7473 of 2019 on the file of the Judicial Magistrate No.II, Dindigul and set aside the same.

For Petitioner : Mr. C.Mayilvahana Rajendran

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

ORDER

This revision petition is preferred against the order 05.09.2019, made in Crl. M.P. No.7473. of 2019, on the file of the Judicial Magistrate No.II, Dindigul, 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-69-M-7337 and that he has not committed any offence as alleged by the respondent/police, and that the case was registered only against two other persons u/s 364 (A) and 392 IPC. It is the case of the petitioner that the vehicle was given to one of his friend Kumaresan, who is the first accused in the crime registered by the police, for the purpose of attending the marriage. However, the said Kumaresan had misused the vehicle, which was subsequently seized by the respondent police and is under their custody. It is further submitted that 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 petitioner filed Cr.M.P. No.7473 of 2019 before the Judicial Magistrate for release of vehicle on conditions. However,



the said petition was dismissed and, therefore, the present revision has been preferred before this Court.

3. Per contra, learned Government Advocate (Crl. Side) vehemently opposed the petition submitting that pending trial, if the vehicle is directed to be released to the petitioner, the petitioner may alienate the vehicle and, thereby, the said act would be very detrimental to the prosecution case, 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.

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 respondent 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.

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-69-M-7337, which is the subject matter of impugned order dated 05.09.2019, made in Cr.M.P.No.7473 of 2019, should be released.



8. Accordingly, this criminal revision case is allowed setting aside the order dated 05.09.2019, made in Cr.M.P.No.7473 of 2019 on the file of the Judicial Magistrate No.II, Dindigul. The vehicle, bearing Regn. No.TN-69-M-7337, which is covered under Cr.M.P. No.7473 of 2019 on the file of the Judicial Magistrate No.II, Dindigul, 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 Court of Judicial Magistrate No.II, Dindigul till the conclusion of the trial;

iii) The petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) before the Court of Judicial Magistrate No.II, 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; and

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

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

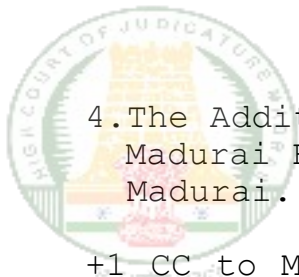
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To

1) The Judicial Magistrate No.II
Dindigul.

2) The Chief Judicial Magistrate, Dindigul.

3) The Sub Inspector of Police
Dindigul Town North Police Station
Dindigul District.



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

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-92599[F] dated
17/10/2019)

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KK/SAR/23.10.2019/4P-6C/