



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

WEB COPY

DATE :15.10.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 743 OF 2019

R.Vikhram .. Petitioner/Petitioner

- Vs -

1. The State, rep. by
Inspector of Police,
Vikkiramangalam Police Station,
Madurai District.
(In Crime No.135 of 2019)
- 2.The Inspector of Police,
Anna Nagar Police Station,
Madurai City,
(In Crime No.685 of 2019)
- 3.The Regional Transport
Madurai North,
Madurai. .. Respondents/Respondents

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure to call for the records pertaining to the order dated 25.09.2019 made in Crl.M.P.No.4230 of 2019 on the file of the Judicial Magistrate No.II, Usilampatti and set aside the same and direct the Judicial Magistrate No.II, Usilampatti to return the BMW Car bearing Chassis No.WBAHU370505E63589, Engine No.0089Y069.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor



ORDER

This revision petition is preferred against the order 25.09.2019, made in CrI.M.P. No.4230 of 2019, on the file of the Judicial Magistrate No.II, Usilampatti dismissing the petition filed by the petitioner u/s 451 Cr.P.C. for return of the vehicle.

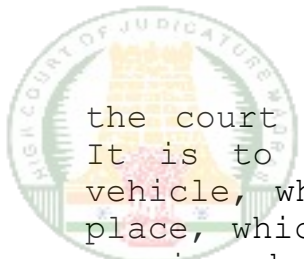
2. It is the case of the petitioner as put forth not only in the petition, but also through the submission of the learned counsel for the petitioner, that the petitioner is the owner of the vehicle, bearing Chassis No.WBAHU370505E63589, Engine No.0089Y069 and that he has not committed any offence as alleged by the respondent/police. The case has been registered u/s 147, 148, 294(b), 307 and 302 of IPC in Crime No.135 of 2019. In pursuance of registration of the above case, the vehicle was seized by the respondent police and is under their custody. However, 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.4230 of 2019 before the Judicial Magistrate No.II, Usilampatti 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 Additional Public Prosecutor 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 (CrI. 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.

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 Chassis No.WBAHU370505E63589, Engine No.0089Y069, which is the subject matter of impugned order dated 25.09.2019, made in Cr.M.P.No.4230 of 2019 on the file of the Judicial Magistrate No.II, Usilampatti, should be released.

8. Accordingly, this criminal revision case is allowed setting aside the order dated 25.09.2019, made in Cr.M.P.No.4230 of 2019 on the file of the Judicial Magistrate No.II, Usilampatti. The vehicle, bearing Chassis No.WBAHU370505E63589, Engine No.0089Y069, which is covered under Cr.M.P. No.4230 of 2019 on the file of the Judicial Magistrate No.II, Usilampatti 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 No.II, Usilampatti, till the conclusion of the trial;

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

iii) 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;

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



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

Sd/-
Assistant Registrar(CO)

WEB COPY

/TRUE COPY/

Sub Assistant Registrar

skn

To

1) The Judicial Magistrate No.II, Usilampatti.

2) The Inspector of Police,
Vikkiramangalam Police Station,
Madurai District.

3) The Inspector of Police,
Anna Nagar Police Station,
Madurai City,

4) The Regional Transport
Madurai North,
Madurai.

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-91852[F] dated 15/10/2019)

CRL. R.C. (MD) NO. 743 OF 2019

15.10.2019

JM/23.10.2019/4P/6C