



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.16951 of 2017

Karthikeyan

...Petitioner/Petitioner/Petitioner

Vs.

State Represented by
the Inspector of Police,
Thathaiyangarapettai Police Station,
Tiruchirappalli District.
(Crime No.22 of 2016)

... Respondent/ Respondent/
Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records and set aside the order dated 18.01.2017 passed in Cr.R.C.No.46 of 2016 on the file of the learned Principal Sessions Judge, Tiruchirappalli, Tiruchirappalli District, confirming the order dated 09.05.2016 passed in Cr.M.P.No.1907 of 2016 on the file of the learned Judicial Magistrate, Thuraiyur, Tiruchirappalli District and hand over the custody of vehicle viz. TOYATA QUALIS bearing registration No.TN 07 AB 5150 (remanded in R.P.No.29 of 2016 dated 11.04.2016) which has been seized by the respondent herein in Crime No.22 of 2016.

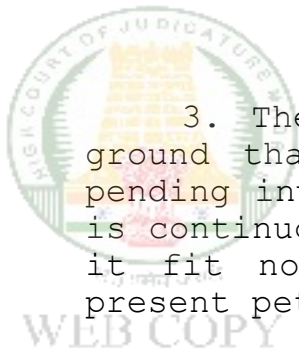
For Petitioner : Mr.A.Thiruvadikumar

For Respondent : Mr.K.Dinesh Babu,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking for return of vehicle.

2. The petitioner claims to be the owner of the TOYATA QUALIS car and his vehicle was seized by the respondent police on the ground that it was used for stealing TASMAL IMFL liquor bottles. The vehicle was seized from the possession of one Raja and an F.I.R was also registered in Crime No.22 of 2016. The petitioner is shown as the owner of the vehicle and he is not shown as an accused in this case.



3. The Court below has dismissed the application only on the ground that there is a previous case for the very same offence pending investigation in Crime No.415 of 2015 and since the vehicle is continuously used for committing offence, the Court below thought it fit not to release the vehicle. Aggrieved by the same, the present petition has been filed before this Court.

4.The learned counsel for the petitioner submitted that the petitioner is not an accused in any of the cases and he is only the owner of the vehicle. The learned counsel further submitted that the Court below ought to have taken note of the settled position of law that has been repeatedly held by this Court, wherein this Court has given guidelines for return of vehicle in such cases. The learned counsel in order to substantiate his submissions relied upon the following judgments:

(i) ***Sundaram Finance Ltd vs State of Tamil Nadu*** reported in 2010- L.W.(Cr1) 1122; and

(ii) ***Selvam Vs. State by Inspector of Police***, reported in 2012 (1) MWN (Cr) 288.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the vehicle belonging to the petitioner is involved in repeated offenses of similar nature and therefore, the Court below has rightly dismissed the application filed by the petitioner seeking for return of vehicle. He further submitted that there is no ground to interfere with the order passed by the Court below. The respondent police has also filed a status report in this case.

6. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

7. It is seen from the records that the petitioner is only the owner of the vehicle and he has not been shown as accused in any case. The law, as it stands today is that, the vehicle will have to be released as a rule and it can be denied only in exceptional cases. It will be relevant to rely upon the judgments cited by the learned counsel for the petitioner.

(i) In ***Sundaram Finance Ltd vs State of Tamil Nadu*** reported in 2010- L.W.(Cr1) 1122 this Court has held as follows:-

"11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon'ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in



altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

12. This court expresses a sincere hope that atleast hereinafter the criminal courts would follow the decision of the Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat**, in true letter and spirit."

(ii) This Court has again considered in **Selvam Vs. State by Inspector of Police** reported in **2012 (1) MWN (Cr) 288** and the relevant portion of the judgment is extracted herein.

" 8. This Court in the case of **Sundaram Finance Ltd., V. The State of Tamil Nadu, 2011 (1) MWN (Cr.) 437** observed as follows:

'11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon'ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced



to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.'

9. In the light of the above it is expected that the Courts below will make all out efforts to avoid holding of vehicles at Courts and Police Stations and dispose of petitions seeking return of vehicles in such a manner as is found most feasible in the facts of a particular case. The same may be by ordering of return in favour of the owner or insurer or even by sale and deposit of the proceeds."

8. It is clear from the above judgments that permission for the return of the vehicle should be the general norm rather than the exception. This Court has gone to the extent of saying that the owner of the vehicle can even be permitted to sell the vehicle after causing of photographs of the vehicle and preparing the panchanama in the presence of the witnesses. The march of law has gone to that extent.

9. In view of the above, this Court has no hesitation to interfere with the order passed by the Court below. Accordingly, the same is set aside. The learned Judicial Magistrate, Thuraiyur, Tiruchirappalli District is directed to release the vehicle to the petitioner subject to the following conditions:-

- (i) necessary photographs shall be taken and the same shall be authenticated and certified and detailed panchanama shall be prepared before the release;
- (ii) the photographs taken shall be used as secondary evidence during the trial and the production of the vehicle shall be dispensed with; and
- (iii) The petitioner is permitted to sell the vehicle after complying with the above formalities.

10. Accordingly, this Criminal Original Petition is allowed with the above directions.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar



To

1. The Principal Sessions Judge,
Tiruchirappalli, Tiruchirappalli District
2. The Judicial Magistrate,
Thuraiyur, Tiruchirappalli District
3. The Inspector of Police,
Thathaiyangarapettai Police Station,
Tiruchirappalli District.
(Crime No.22 of 2016)
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s.A.THIRUVADI KUMAR, Advocate SR-87635[F] dated 19/09/2019

Order made in
Crl.O.P. (MD) .No.16951 of 2017

Dated:18.09.2019

sts

MS/15.10.2019/5P.6C