

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

Crl.R.C.No.526 of 2020

Arumugam Sivalingam

... Petitioner/A-2

Vs.

1.State represented by
The Inspector of Police,
Periyanaickenpalayam Police Station.
(Crime No.67 of 2020) ... Respondent/Complainant

2.Supreme City Investment,
No.5, Appachi Nagar, 1st street,
Kongu Main Road,
Tiruppur - 641 607. Respondent/R.C.
Book holder

(2nd respondent impleaded as per order dated 26.08.2020 in
Crl.M.P.No.5109 of 2020 in Crl.R.C.No.526 of 2020)

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.
seeking to set aside the order dated 06.06.2020 passed in
C.M.P.No.78 of 2020 on the file of the Judicial Magistrate
Court No.V, Coimbatore.

For Petitioner : Mr.G.R.Deepak

For R1 : Mrs.P.Kritika Kamal
Government Advocate
(Crl. Side)

For R2 : Mr.Agilesh Kumar

O R D E R

This case is taken up through video conferencing.

2. This criminal revision is filed to set aside the
order dated 06.06.2020 passed in C.M.P.No.78 of 2020 on the
file of the Judicial Magistrate Court No.V, Coimbatore.

3. It is the case of the prosecution that the
petitioner and his nephew Dhanapal approached Swaminathan (de
facto complainant) and promised to give him a brass urn with
mystical properties that would bring wealth and prosperity and
induce the de facto complainant to give Rs.5,00,000/- as

advance; believing them, the de facto complainant gave Rs.5,00,000/- as advance; on 05.02.2020, the duo called the de facto complainant to a place, to show the mystical urn that was kept in the car of the petitioner; the complainant became suspicious and lodged a complaint, pursuant to which, a case in Crime No.67 of 2020 was registered for the offences under Sections 406 and 420 IPC, the petitioner was arrested and his car was seized by the police.

4. After the petitioner was released on bail, he filed a petition in C.M.P.No.78 of 2020 before the Judicial Magistrate Court No.V, Coimbatore, under Section 451 Cr.P.C. for interim custody of the car, which was dismissed on 06.06.2020, aggrieved by which, the petitioner has filed the present revision petition.

5. Heard Mr.G.R.Deepak, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the first respondent/State.

6. On the directions of this Court, Supreme City Investment, which had provided finance to the petitioner for purchase of the car, was impleaded as the second respondent and Mr.Agilesh Kumar, Advocate, has entered appearance for the second respondent.

7. Mr.Agilesh Kumar, learned counsel for the second respondent has filed a counter dated 10.08.2020, wherein, it is stated as follows:

"2.The 2nd respondent submit that the petitioner had purchased the While Desire vehicle bearing Registration No.TN 39 BL 9006. The petitioner had hypothecated his vehicle for a loan of Rs.3,50,000/- (Three Lakhs Fifty Thousand Only) of the said vehicle from the 2nd respondent for which he had issued cheques. The 2nd respondent submits that the original R.C.book is with them.

3.The 2nd respondent submits that the petitioner had informed him that the vehicle was seized in Crime No.67 of 2020 on the file of the respondent police and requested him to issue a letter stating that the vehicle was under hypothecation. Subsequently, the 2nd respondent had issued a letter on 20.03.2020 based on the request of the petitioner.

4.The 2nd respondent submits that the petitioner is paying all the instalment till date and the account statement is produced herewith

for perusal of this Hon'ble Court."

<https://hcservices.ecourts.gov.in/hcservices/>

8. It is seen that the car is now parked in the police station open to sun and rain.

9. Taking into consideration the aforesaid facts and in view of the guidelines given by the Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat*¹, this Court is of the view that interests of justice will be served, if the custody of the car is ordered to be given to the petitioner on the following conditions:

- (i) The petitioner shall deposit a sum of Rs.2,50,000/- before the Judicial Magistrate Court No.V, Coimbatore;
- (ii) On such deposit, the trial Court shall re-deposit the amount in a fixed deposit account in any nationalized bank so that the amount with accrued interest can be disbursed either to the petitioner or to the de facto complainant depending upon the outcome of the prosecution in Crime No.67 of 2020;
- (iii) The petitioner shall execute a bond for a sum of Rs.25,000/- with two sureties each, for a like sum to the satisfaction of the Judicial Magistrate Court No.V, Coimbatore, undertaking that he will not use the vehicle in question for any illegal activities in future. The petitioner and the sureties shall affix their photographs and give the copies of their Aadhaar Card;
- (iv) The petitioner shall file an affidavit before the trial Court that he will not dispute the seizure of his car and he will not object to the prosecution marking the photographs of the car and photocopy of the R.C. book of the car in lieu of marking the car and the original R.C. book of the car, itself. The petitioner shall also state that he will not object to the witnesses identifying the car with the photos in lieu of identifying the car itself;

(v) The petitioner shall not alienate the vehicle in question without the permission of the Judicial Magistrate No.V, Coimbatore;

(vi) The petitioner shall take photograph of the vehicle and the Judicial Magistrate No.V, Coimbatore, shall certify the same for the purpose marking during trial;

(vii) The petitioner shall submit a photocopy of the) original R.C. book of the car before the Judicial Magistrate No.V, Coimbatore; and

(vii) The petitioner, on complying with the aforesaid i) conditions, the Judicial Magistrate No.V, Coimbatore, shall hand over the custody of the car to the petitioner.

This petition is allowed in the above terms and the order dated 06.06.2020 passed in C.M.P.No.78 of 2020 on the file of the Judicial Magistrate Court No.V, Coimbatore, is set aside.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

nsd

To

1.The Judicial Magistrate No.V,
Coimbatore.

2.The Inspector of Police,
Periyanaickenpalayam Police Station.

3.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

Cr1.R.C.No.526 of 2020

SVI (CO)