

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2020
PRONOUNCED ON : 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.RC.NO.890 OF 2020

Abimannan,
S/o.Karuppachettiar

..Petitioner

/versus/

The State represented by
The Sub-Inspector of Police,
Vellithiruppur Police Station,
Erode District.
(Crime No.15/2020)

..Respondent

Prayer: Criminal Revision Case filed under Section 397 and 401 of Code of Criminal Procedure filed to call for the records in C.M.P.No.987 of 2020 on the file of the learned Judicial Magistrate No.II, Bhavani and set aside the order in C.M.P.No.987 of 2020 dated 27.08.2020.

For Petitioner : Mr.Lakshmipathy
For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

The petitioner, who is A7 in Crime No.15 of 2020 has filed this petition seeking return of vehicle viz., Yamaha Crux (Motor Cycle) bearing Registration No.TN 36 AY 2754, against the dismissal order passed by the learned Judicial Magistrate No.II, Bhavani in C.M.P.No.987 of 2020 dated 27.08.2020.

2.The gist of the case is that on 03.02.2030, the defacto complainant, Hariharan lodged a complaint before the respondent Police stating that due to the previous motive, the first accused's father Sekar was done away by one Chinnathangam @ Radhakrishnan. Due to which A1 colluded with his uncle Prabakaran/A8 and the petitioner/A7 and planned to commit murder of the deceased. This petitioner and A8 arranged the hirelings/A2 to A6 to commit murder. The petitioner had taken five

knives and kept it in several places by using his two wheeler viz., Yamaha Crux, he transported the weapon and handed over the same to the assailants to do away Chinnathangam @ Radhakrishnan. Hence, the case in Crime No.15 of 2020 for the offence under Section 147, 148, 341 302 IPC r/w 120 (b) IPC came to be registered on 03.02.2020. Thereafter, on 04.02.2020 A2 to A6 were arrested. This petitioner was arrested on 19.02.2020 and based on his confession his two wheeler Yamaha Crux bearing No. TN 36 AY 2754 was seized. The vehicle was produced before the Lower Court and the case property was assigned P.R.No.18 of 2020. On completion of investigation, charge sheet came to be filed on 13.07.2020 before the Judicial Magistrate Court No.II, Bhavani. The petitioner filed a petition seeking return of vehicle in C.M.P.No.987 of 2020 before the Lower Court and the same was dismissed by the Lower Court on 27.08.2020, against which the present revision.

3.The contention of the learned counsel for the petitioner is that the petitioner was not present in the scene of occurrence and he had not taken part in the alleged offence and the petitioner had been roped in this case on the charge of conspiracy. The bike was seized on 19.02.2020 from the petitioner and from then on the vehicle is kept in Police Station exposing to vagaries of weather. The Trial Court dismissed the petition on the ground that the investigation has not been completed and vehicle has to be send for examination and if the vehicle is released there is a possibility for tampering or selling the case property. The petitioner reliable understands that in this case the investigation has been completed on 13.07.2020 and charge sheet filed before the Judicial Magistrate No.II, Bhavani. Further in support of his contention he relied upon the decision of the Hon'ble Supreme Court of India, in the case of "Sunderbhai Ambalal Desai Vs. State of Gujarat" reported in MANU/SC/1110/2002 and AIR 2003 638 and the decision of this Court in the case of "Selvam & Another Vs. State by Inspector of Police, Theevatipetti Police Station & Another" reported in CDJ 2012 MHC 692.

4.The learned Additional Public Prosecutor filed his counter along with the confession of the petitioner and submitted that the petitioner conspired with A1 and A8 and arranged hire-lings A2 to A6 to commit murder. The petitioner was using Yamaha Crux black colour motor bike bearing No. TN 36 AY 2754. The petitioner had taken knives, kept it in a several place and thereafter handed over the same to A2 to A6 on the day of assault. Admittedly he was not an assailant and he had been roped in this case and arrested on 19.02.2020. Based on his arrest and confession the bike has been seized. The Hon'ble Apex Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat" reported in MANU/SC/1110/2002 and AIR 2003 638 has

held that the vehicles can be handed over to the petitioner with certain conditions. Following this decision, this Court in the case of Selvam & Another Vs. State by Inspector of Police, Theevatipetti Police Station & Another" reported in CDJ 2012 MHC 692 ordered return of vehicle to the petitioner including the accused and observed that "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".

5. Considering the facts and circumstances of the case, this Court is inclined to return the vehicle to the petitioner. The respondent police is directed to grant custody of the said vehicle (Yamaha Crux) bearing Registration No. TN 36 AY 2754 to the petitioner after causing necessary photographs and panchnama, within a period of 7 days from the date of compliance of the below mentioned condition Nos.(i) to (iii):-

(i) The petitioner shall execute a personal bond for a sum of Rs.20,000/- with two sureties each, for a like sum to the satisfaction of the Judicial Magistrate No.II, Bhavani. The petitioner and the sureties shall affix their photographs and give the copies of their Aadhaar Card;

(ii) The petitioner shall not alter or alienate the vehicle in question till the completion of Trial;

(iii) The petitioner shall take photograph of the vehicle and submit the same along with Compact Disc duly certified under Section 65-B of the Indian Evidence Act, 1872;

(iv) The petitioner shall produce the original R.C. Book and submit a photostat copy of R.C.Book before the Judicial Magistrate No.II, Bhavani;

6. In view of the above, the order made in C.M.P.No.987 of 2020 by the Judicial Magistrate No.II, Bhavani is hereby set aside. The Criminal Revision Case is accordingly, allowed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rst

To:

1.The Judicial Magistrate No.II, Bhavani.

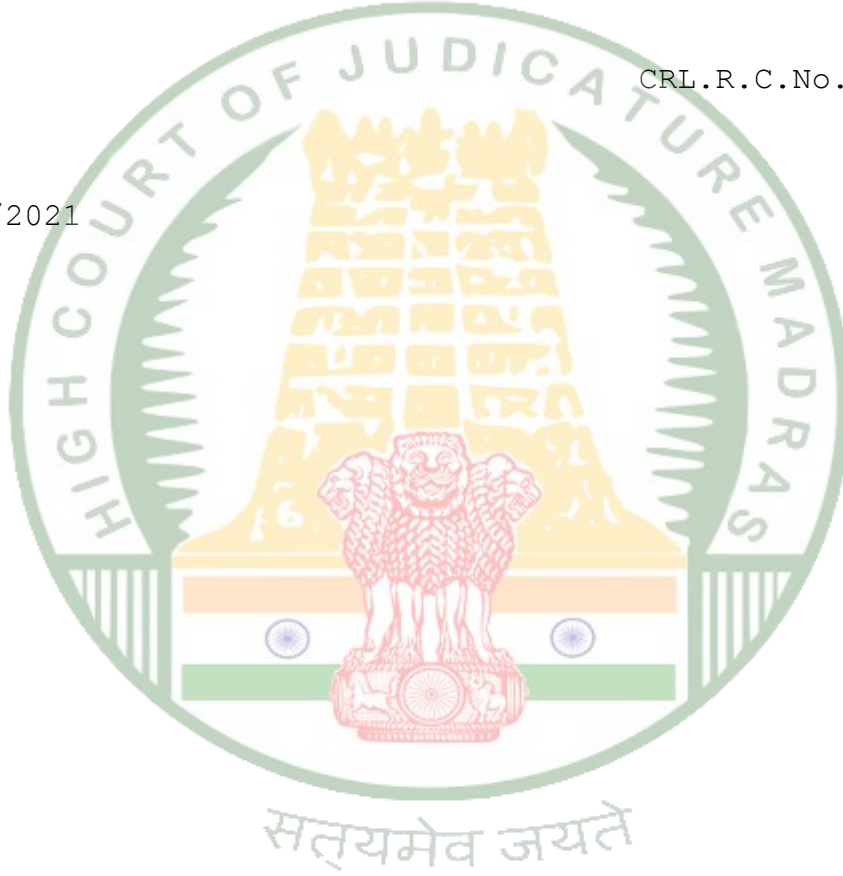
2.The Sub-Inspector of Police,
Vellithiruppur Police Station,
Erode District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Lakshmipathy, Advocate, S.R.No.39924

CRL.R.C.No.890 of 2020

SPD(CO)
KKV/05/01/2021



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