

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1246 of 2020

S.Karthick Kumar

... Petitioner

Vs.

State represented by,
Inspector of Police,
Pattabiram Police Station,
Thiruvallur District.
(Crime No.48 of 2020).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set-aside the order dated 28.09.2020 made in C.M.P.No.2734 of 2020 on the file of the Judicial Magistrate Court No.II, Thiruvallur by allowing this petition.

For Petitioner : Mr.M.Guruprasad

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

ORDER

The petitioner has filed a petition under Sections 451 & 457 Cr.P.C., in C.M.P.No.2734 of 2020 before the learned Judicial Magistrate No.II, Thiruvallur, seeking return of vehicle viz., Maruthi Suzuki White Car bearing registration number TN 41 M AM 2206, which was seized by the respondent Police in Crime No.48 of 2020. The learned Judicial Magistrate No.II, Thiruvallur, by order, dated 28.09.2020, dismissed the petition, against which the present revision.

2.The gist of the case in Crime No.48 of 2020 is that on 29.01.2020, the defacto complainant Jesse Jane Margaret lodged a complaint stating that she is employed as Teacher in Infant Jesus School at Pattabiram and also doing social activities. She and her colleague Usha are close friends. The said Usha represented to the defacto complainant that her sister is residing at Mathur and informed one Priya was arranging for loan for many persons. Since the defacto complainant was involved in

social activities, she was in need of money. The defacto complainant approached the said Priya and gave Rs.2,50,000/- as initial amount for loan. One Rupani Priya was introduced to the defacto complainant by the said Priya and to open a trust, the defacto complainant and her friends gave around Rs.28,00,000/- on various occasions to the said Rupani Priya. On receipt of the said huge amount, she failed to arrange for loan and thereafter, when the amount was asked to be repaid, the said Rupani Priya was giving one reason or other and finally, absconded herself. Later on coming to know that she was staying in Coimbatore, the complaint was lodged by the defacto complainant. During investigation, the respondent Police seized the vehicle of the petitioner, who happens to be husband of Rupani Priya.

3.The learned counsel for the petitioner submitted that the petitioner is the owner of the vehicle viz., Maruthi Suzuki White Car bearing registration number TN 41 M AM 2206. The vehicle was purchased by the petitioner on 27.08.2015, by using his hard earned money and for his own purpose. The marriage between the petitioner and Rupani Priya was held on 18.03.2016. Due to some misunderstanding between them, a divorce petition was filed by the petitioner before the learned Subordinate Judge, Pollachi, in H.M.O.P.No.83 of 2017. The divorce petition was allowed and ex-parte decree was passed granting divorce in favour of the petitioner on 16.02.2018. Thereafter, the petitioner has no connection with Roobini Priya and they are living separately. The learned counsel for the petitioner further submitted that the defacto complainant lodged a complaint on 29.01.2020 before the respondent Police. It is the case that the defacto complainant had paid the huge amount to Rupani Priya on 24.03.2018 which is well before the petitioner obtaining divorce from Rupani Priya. Further, the petitioner is not an accused in Crime No.48 of 2020. It is further submitted that the petitioner obtained anticipatory bail in Crl.O.P.No.4872 of 2020 before this Court by order dated 03.03.2020. The respondent seized the vehicle of the petitioner on a wrong premise that the car was purchased by the divorced wife Rupani Priya by using the misappropriated and cheated money. The case of the respondent in Crl.O.P.No.4872 of 2020 is that the divorced wife of the petitioner had purchased a two wheeler and given the same to the petitioner for his use, but there is no such two wheeler available with the petitioner.

4.The trial Court dismissed the petition for return of vehicle for the reason that the petitioner purchased the vehicle by using the misappropriated and cheated amount is also not proper. In support of his contention, the petitioner produced

the cash receipt, Invoice, Registration Certificate of the vehicle, Judgment in H.M.O.P.No.83 of 2017 and the order in Crl.O.P.No.4872 of 2020 by way of filing the Additional Typed set of papers.

5.Further, the vehicle of the petitioner is kept in open space, exposed to vagaries of weather and thereby, the value of the vehicle is getting diminished. Further, he placed reliance on the citation of the Hon'ble Apex Court in the case of "*Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290*", wherein guidelines were issued in the cases of return of property to the owner.

6.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that on the complaint of the defacto complainant Jesse Jane Margaret, a case in Crime No.48 of 2020, for offence under Section 406 and 420 IPC came to be registered on 29.01.2020. One of the accused Rubini Priya in Crime No.48 of 2020 is none other than the wife of petitioner. The said Rubini Priya cheated around Rs.28 lakhs, which was received from the defacto complainant and others to get loan. Further, the said Rubini Priya is the absconding accused. The petitioner now making submission that he divorced Rubini Priya has to be verified. During investigation, the vehicle was seized by the respondent Police and the main accused is still absconding. If the vehicle is returned to the petitioner, the same would be sold and nothing would be available for recovery. Hence, he prayed to dismiss the revision.

7.This Court considered the rival submissions and perused the materials available on record.

8.It is seen that the petitioner is not a named accused in this case. The vehicle was purchased by the petitioner on 27.08.2015 and the cash receipt, invoice and registration certificate are produced to that effect. The marriage between the petitioner and Rubini Priya, who is a named accused, was held on 18.03.2016 after purchase of vehicle. The petitioner obtained divorce from Rubini Priya in H.M.O.P.No.83 of 2017 on 16.02.2018 and he obtained anticipatory bail in Crl.O.P.No.4872 of 2020 on 03.03.2020. It is seen that from 23.05.2020, the vehicle is kept in open space and thereby, the value of the vehicle is getting diminished. The Hon'ble Apex Court in the case of "*Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290*", had given guidelines in the cases of return of property to the owner.

9. In view of the aforesaid reasons, this court set aside the order passed by the learned Judicial Magistrate No.II, Thiruvallur, made in C.M.P.No.2734 of 2020, dated 28.09.2020 and the criminal revision is allowed.

10. The learned Judicial Magistrate No.II, Thiruvallur is directed to return the vehicles, viz., Maruthi Suzuki White Car bearing registration number TN 41 M AM 2206, to the petitioner, on the following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand) to the satisfaction of the learned Judicial Magistrate No.II, Thiruvallur.

(ii) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove his ownership and the learned Magistrate, on perusal of the RC books and other records, retaining the Xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle;

(iii) The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over;

(iv) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the court below and as well as by the District Collector of the District or authorized officer in that behalf by the Government.

Sd/-
Assistant Registrar (CCC)

/True Copy/

सत्यमेव जयते Sub Assistant Registrar

To

1. The Judicial Magistrate No.II, Thiruvallur.
2. The Inspector of Police,
Pattabiram Police Station, Thiruvallur District.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate Sr.No.43053

AKM/11.02.21/4P-5C/

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