



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C. (MD) .No.32 of 2016

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M/s.Solamandalam Investment
and Finance Company Limited,
Dare House, No.2, V.S.C. Boss Road, Paris,
Chennai - 600 001,
rep. by Mr.A.Vinoth Kumar,
Senior Legal Officer,
2/34, V.Tower Melakkal Main Road,
Madurai.

.. Revision Petitioner/Petitioner

Vs.

1.The Inspector of Police,
Viralimalai Police Station,
Pudukottai District.
In Crime No.55 of 2013

2.R.Ayyanar

.. Respondents/Respondents

(R2 Impleaded as per order of this Court made in Crl.M.P.(MD).
NO.8434/2016, in Crl.R.C.(MD).No.32/2016 dated 18.09.2017.)

PRAYER: Criminal Revision Case, filed under Section 397 r/w 401 of
the Criminal Procedure Code, to call for the records relating to
the order dated 18.09.2015 made in Crl.M.P.No.9015 of 2015 on the
file of the District Munsif cum Judicial Magistrate, Keeranur and
set aside the same as illegal.

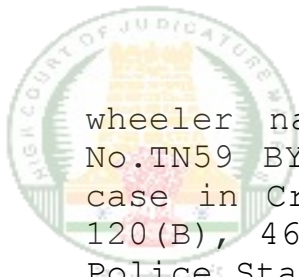
For Petitioner : Mr.B.Janarth Kumar
For Respondents : Mr.A.Robinson for R1
Government Advocate (Crl. Side)
Mr.A.Vadivel for R2

ORDER

This revision case is filed by the petitioner/Solamandalam
Investment and Finance Company Limited through his Power Agent, as
against the order passed by the learned District Munsif cum
Judicial Magistrate, Keeranur, in Cr.M.P.No.9015 of 2015 in
R.P.No.126 of 2013 in C.C.No.36 of 2014, dated 18.09.2015.

2.The brief facts of the case are follows:

The second respondent/Hire Purchaser purchased a four
<https://hcservices.ecourts.gov.in/hcservices/>



wheeler namely SML, ISUZU IS IZ T TRUCK, bearing registration No.TN59 BY 3204 and the said vehicle was involved in a criminal case in Crime No.55 of 2013, for the offence under Sections 420, 120(B), 465, 468, 471, 109 of IPC, on the file of the Viralimalai Police Station.

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2.1.The petitioner is the Financier for the vehicle and the RC Book also stands in their name, since the second respondent hypothecated the vehicle with the company. The petitioner moved an application before the learned Judicial Magistrate, Keeranur, in Cr.M.P.No.2427 of 2014 and obtained an interim custody of the vehicle. The trial before the trial court is not completed even after a year. At this juncture, the petitioner/financier moved an application before the trial Court, in Cr.M.P.No.9015 of 2015, under Section 428 Cr.P.C., seeking permission to dispose of the vehicle, that the vehicle has been damaged and would also incur more maintenance charges. The learned Judicial Magistrate dismissed the petition that if the petitioner disposed of the property, it cannot be marked as a material object at the time of trial and this property is necessarily to be marked as a material object. As against this order, the petitioner/financier herein preferred this revision petition, on the grounds that the petitioner is the owner of vehicle and the second respondent on hypothecation, obtained a loan from the petitioner and the vehicle is now kept idle without any use, exposed to sun light and rain, getting rust and it may loose its value.

3.In fact the case was registered on a complaint of this petitioner that the second respondent Ayyanar / Hire purchaser has lodged a false complaint as against this petitioner that the petitioner finance company has taken away the said vehicle bearing No.TN59 BY 3204. On his complaint a case was also registered in Crime No.55 of 2013 under Section 379 of IPC (NP). But, during the investigation the respondent/police found that it is the said Ayyanar, foisted a false complaint in Crime No.55/2013 and therefore, the respondent police altered the sections from 379 of IPC (NP) into 120(b), 420, 465, 468, 471 and 109 IPC and arrayed the said Ayyanar as an accused, for which the said Ayyanar is facing the trial before the trial Court.

4.The learned Government Advocate (Crl. Side) submits that before the trial court, except the Investigation Officer, all others were examined and the case also posted for examination of the Investigation Officer on 10.07.2020 and 20.07.2020. The vehicle involved in this case has to be marked as a material object. He also submits that the case was transferred from the file of the learned Judicial Magistrate, Keeranur to the file of the learned Judicial Magistrate, Elupur and now pending in C.C.No.14 of 2020.



5.The learned counsel for the petitioner submits that the photographs may be marked as material object instead of the vehicle. In support of his contention, the learned counsel for the petitioner relied upon the decision of the Honourable Supreme Court in **Sundarbhai Ambalal Desai Vs. State of Gujarat**, reported in **2003 (1) CTC 175**. He also relied upon the Judgment of this Court in **Sundaram Finance Private Limited Vs. Inspector of Police, Kaveripattinam police station** reported in **2011 (1) MLJ (Crl.) 191**.

6.This court paid its anxious consideration to the rival submissions made on both sides.

7.Originally, the petitioner is the owner of the vehicle and the RC Book also stands in his name. The second respondent has not paid the dues properly and on their dispute a case was also registered. This vehicle is now shown as a property in the said criminal case. The trial is also pending from the year 2000. According to the learned Government Advocate (Crl. Side), except the Investigation Officer, all others have been examined. The vehicle has been returned to the petitioner under Section 451 of Cr.P.C, lying in yard without any use.

8.It would be relevant to refer the Judgment of the Honourable Supreme Court in **Sundarbhai Ambalal Desai Vs. State of Gujarat**, reported in **2003 (1) CTC 175**, which was relied upon in the Judgment of this Court in **Sundaram Finance Private Limited Vs. Inspector of Police, Kaveripattinam police station** reported in **2011 (1) MLJ (Crl.) 191**, wherein in para 10, this Court referring the above said decision of the Honourable Apex court, held as follows:

"10. This Court can do no better than reproduce the salient paragraphs in the judgement of the Hon'ble Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat, (2003 (1) CTC 175)**:

'3. At the time of the hearing of these matters, learned counsel for the parties submitted that various articles are kept at the police station for a long period by not adhering to the procedure prescribed under CrPC, which creates difficulties for keeping them in safe custody. Finally, the sufferers are either the State exchequer or the citizens whose articles are kept in such custody. It is submitted that speedier procedure is required to be evolved either by the court or under the rules for disposal of mudammal articles which are kept at various police stations as most of the police stations are flooded with seized articles.



It is, therefore, submitted that directions be given so that burden of the courts as well as at the police stations can, to some extent, be reduced and that there may not be any scope for misappropriation or of replacement of valuable articles by spurious articles.

4. Learned counsel further referred to the relevant Sections 451 and 457 of the Code of Criminal Procedure, which read thus:

451. Order for custody and disposal of property pending trial in certain cases. ____ When any property is produced before any criminal court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.__ For the purposes of this section, #property# includes ____

(a) property of any kind or document which is produced before the court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a criminal court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.__



5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as:

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;

(3) if the property is subject to speedy and natural decay, to dispose of the same.

6. It is submitted that despite wide powers, proper orders are not passed by the courts. It is also pointed out that in the State of Gujarat there is Gujarat Police Manual for disposal and custody of such articles. As per the manual also, various circulars are issued for maintenance of proper registers for keeping the mudammal articles in safe custody.

7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in a number of matters. In *Basavva Kom Dyamangouda Patil v. State of Mysore* 1 this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:

"4.The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any



time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.____

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.

15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return



of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

24. In our view, no further directions are required to be given in these matters. However, it is made clear that in case where accused disputes that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph. Further with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the Court and the Seizure Report may be sufficient. The Special Leave Petitions are disposed of accordingly.'

9. Following the above cited decision, this Court in Sundaram Finance Ltd., case, reported in **2011 (1) MLJ 191**, passed the order 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."

10. Therefore, on the ratio laid down by the Honourable Apex Court and this court, there cannot be any impediment to the trial Court to mark the photographs as provided in Sundarbhai Ambalal's case. At this juncture, the learned Government Advocate (Crl. Side) submitted that the case was transferred from the file of the learned District Munsif cum Judicial Magistrate, Keeranur, to the file of learned Judicial Magistrate, Elupur and now pending as C.C.No.14 of 2020. Considering the facts and circumstances of the case, this Court is inclined to allow this revision petition.

11. Accordingly, this revision petition is allowed and the order dated 18.09.2015, passed in Crl.M.P.No.9015 of 2015, on the file of the learned District Munsif cum Judicial Magistrate, Keeranur, is hereby set aside and the learned Judicial Magistrate, Elupur, is permitted to mark the photographs of the vehicle as material objects in C.C.No.14 of 2020 pending on his file.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate, Keeranur.
- 2.The Judicial Magistrate, Elupur.
- 3.The Inspector of Police,
Viralimalai Police Station,
Pudukottai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai(2 Copies).

+1 CC to Mr.A.VADIVEL, Advocate SR.No.15727

+1 CC to Mr.B.JANARTHKUMAR, Advocate SR.No. 15850

**Crl.R.C. (MD) .No.32 of 2016
02.09.2020**

SE(CO)

TR(16.02.2021) 9P 9C