

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.No.4626 of 2019

Mr.Appusamy ...Petitioner/Petitioner/Owner of the Vehicle

.Vs.

The State rep.by its
Inspector of Police,
Kannankuruchi Police Station,
Salem District.

... Respondent/Respondent/Complainant

(Crime No.573 of 2016)

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order and modify the conditions 1 to 8 imposed in C.M.P.No.36 of 2019 order dated 15.11.2019 on the file of the 1st Additional Assistant Sessions Judge, Salem.

For Petitioner: Mr.A.M.Esakkiappan

For Respondent : Mr.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed challenging the conditions imposed by the Court below while allowing the application filed by the petitioner for the return of vehicle.

2.The respondent police registered an FIR in Crime No.573 of 2016, for an offence under Section 323, 353 and 307 of IPC. During the course of investigation, the vehicle belonging to the petitioner was seized. The petitioner is the owner of the vehicle and he is not an accused in the present case.

3.The petitioner filed an application for return of vehicle before the Court below and the Court below allowed the application by an order dt.15.11.2019, by imposing the following conditions.

"In fine this petition is allowed and return of JCB Vehicle bearing bearing Regn.No.KA 13 M 4452 for the Interim custody to the petitioner is ordered on the following conditions:

1. The petitioner shall execute a bond for Rs.5,00,000/- (Rupees Five Lakhs) along with a Solvent surety for the like sum to the satisfaction of this Court;
2. The petitioner shall produce National Security Bond for Rs.1,00,000/- (Rupees One Lakh) drawn in the name of the petitioner;
3. The petitioner shall produce the vehicle before this Court on the first Thursday of every month during working days without fail.
4. The petitioner shall not effect any change or alteration in the physical features of the vehicle without the permission of the Court;
5. The petitioner shall produce the vehicle before this Court as and when required and also at the time of evidence of Investigation Officer for the purpose of identification;
6. The petitioner shall not effect any transfer by way of sale or alienation, mortgage, pledge or hypothecation of the said vehicle to any Finance Corporation till disposal of the case;
7. The petitioner shall also produce the vehicle on the date of judgment of the case.
8. On violation of any of the conditions, order passed for interim custody will be cancelled without notice.

4.The grievance of the petitioner is that the conditions imposed by the Court below virtually prevents the petitioner from using the vehicle and these conditions goes against the guidelines that have already been issued by the Apex Court and this Court in various reported judgments.

5.Heard Mr.A.M.Esakkiappan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondent.

6.It is now a settled law that when it comes to return of vehicle to the owner, who is not an accused person, the most preferred manner in which such applications must be disposed of would be to cause the photographs of the vehicle and record the panchanama. These photographs and panchana that is prepared by the concerned Court shall be read as an evidence and it can be

marked instead of making the vehicle itself a materials object in the case. The Court below did not take into consideration this settled position of law.

7. In view of the above, this Court is inclined to interfere with the conditions imposed by the Court below. The matter is remitted back to the Court below and the Court below is directed to follow the guidelines issued by the Hon'ble Supreme Court in *Sunderbhal Ambalal Desai v. State of Gujraj* reported in AIR 2003 SC 638, *Selvam and Others v. State by Inspector of Police, Salem District and Others* reported in (2012) 2 CTC 549 and *K.Ramar v. State of Tamil Nadu, rep.by the Inspector of Police, Virudhunagar District* reported in (2013) 1 MLJ CrI 101. The Court below shall cause the photographs of the vehicle to be taken and record Panchanama thereof. This process shall be completed by the Court below and appropriate orders shall be passed within a period of two weeks from the date of receipt of a copy of this order.

8. This Criminal Original Petition is accordingly allowed with the above directions.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KP
To

1. The Inspector of Police,
Kannankuruchi Police Station,
Salem District.
2. The 1st Additional Assistant Sessions Judge,
Salem.
3. The Public Prosecutor,
High Court, Madras.

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