



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.215 of 2021

P.Jagadesan

...Petitioner

Vs.

The Station House Officer,
Nettapakkam Police Station,
Puduchery.
(Crime No.198 of 2020)

...Respondent

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order dated 09.03.2021, passed in Crl.M.P.No.711 of 2021, on the file of the Judicial Magistrate No.1, Pondicherry and direct the respondent to return the Maruti Suzuki Swift Dzire Car bearing registration No.TN-31-AJ-7822, to the petitioner.

For Petitioner : Mr.Anbalagan

For Respondent : Mr.D.Bharathachakravarthi
Public Prosecutor (Pondicherry)

O R D E R

By consent of the learned counsel for the petitioner, the matter is taken up today for final disposal at the admission stage itself.

2. The present Criminal Revision Case has been filed against the order dated 09.03.2021, passed by the learned Judicial Magistrate No.1, Pondicherry in Crl.M.P.No.711 of 2021, dismissing the petition filed under Section 451 of Cr.P.C, seeking return of the Maruti Suzuki Swift Dzire Car bearing registration No.TN-31-AJ-7822, to the petitioner.

3. The respondent-Police has seized a Maruti Suzuki Swift Dzire Car bearing registration No.TN-31-AJ-7822, belonging to the petitioner in connection with the case registered in Crime No.198 of 2020 on its file for offence under Sections 341, 323, 324, 364(A) and 397 of IPC. Hence, the petitioner has moved Crl.M.P.No.711 of 2021 in Crime No.198 of 2020, before the



learned Judicial Magistrate-I, Pondicherry, seeking return of the vehicle. Such petition came to be dismissed under orders of the Court below dated 09.03.2020. Hence, this revision.

4. The learned counsel for the petitioner would submit that the petitioner is involved in the buying and selling of used cars and during the course of business, one Arumugam, approached the petitioner for selling his Maruti Suzuki Swift Dzire Car bearing registration No.TN-31-AJ-7822 and sold the same to the petitioner and signed all the necessary papers and handed over all the original documents pertaining to the car, and in exchange purchased purchased Mahindra XUV500 W8 car from the petitioner, later, as an afterthought gave a compliant of kidnapping after a delay of 4 days and on that basis, the respondent herein had recovered the car from the petitioner on 06.01.2021. It is further submitted that the petitioner was innocent bonafide buyer and redeem the sale consideration paid by him only by selling the said Maruti Suzuki Swift Dzire Car bearing registration No.TN-31-AJ-7822. However, the learned Judge, erroneously rejected the petition filed under Section 451 of Cr.P.C. In support of his contentions, the learned counsel has relied upon the Judgment of the Hon'ble Supreme Court in the case of Basavva Kom Dyamangouda Patil Vs. State of Mysore [1977 4 SCC 358]; Sunderbhai Ambalal Desai Vs. State of Gujarat [(2002) 10 SCC 283]; General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. [(2010) 6 SCC 768].

5. The learned Public Prosecutor (Puducherry) would submit that if the Maruti Suzuki Swift Dzire Car bearing registration No.TN-31-AJ-7822 is returned to the petitioner, he will not produce the same during the trial period, since he himself has admitted that as per his nature of business, the said car was purchased by him as a mediator for buying and selling used cars and he may not be in a position to retain the same for long time as he had to sell the car to realize the sale consideration paid by him to Arumugam for purchasing the alleged property, failing which, he will be put to irreparable loss and hardship. Further, the said Arumugam had also filed a petition for interim custody of the alleged car bearing registration No.TN-31-AJ-7822 before the trial Court in Crl.M.P.No.1146 of 2021 and the same is pending and further, there is a dispute regarding the ownership of the property and if the property is returned, the petitioner may not retain it and produce the same during trial, and therefore, the learned Magistrate, on proper appreciation of materials, rightly dismissed the petition, and as such, no interference is required.

6. Heard the learned counsel for the petitioner and the learned Public Prosecutor (Puducherry) for the respondent and perused the materials available on record.



7. Admittedly, a case was registered by the respondent-Police in Crime No.198 of 2020 on its file for offence under Sections 341, 323, 324, 364(A) and 397 of IPC and during the pendency of the investigation, the respondent-Police has seized a Maruti Suzuki Swift Dzire Car bearing registration No.TN-31-AJ-7822, belonging to the petitioner. It could be seen from the records both the petitioner herein and Arumugam, who sold the alleged car to the petitioner herein, have approached the learned Magistrate, for the interim custody of the vehicle. The present petition is challenged by the petitioner for the dismissal of the petition filed under Section 451 of Cr.P.C. by the learned Magistrate. The petition filed by the erstwhile owner-Arumugam in Cr.M.P.No.1146 of 2021 before the learned Magistrate is still pending, and the same can be concluded only after trial.

8. Though the learned counsel for petitioner, by referring the decisions of the Hon'ble Supreme Court, submitted that the vehicle cannot be kept in open space, if it is kept in open space, and exposed to sun light and rain, it would lose its value, and therefore it has to be returned, however, the said decisions would not be applicable to the present case on hand, as admittedly, the investigation is not yet completed and the charge sheet also yet to be filed and if the vehicle is released, there would be a possibility for changing the engine and chassis number, which would defeat the entire case of the prosecution, and therefore, this Court is not inclined to grant relief to the petitioner. Further, during the investigation, releasing of the vehicle is purely discretionary power of the Court. Unless any arbitrariness or malafides found, the revision Court need not interfere with the order passed by the Court below.

9. In view of the above, this Court is not inclined to exercise discretionary power and there is no illegality or perversity in the order passed by the learned Judicial Magistrate, Puducherry. In fine, the Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
Pondicherry.

2. The Station House Officer,
Nettapakkam Police Station,
Puduchery.

3. The Public Prosecutor,
(Puduchery),
Madras High Court.

4. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M.Anbalagan, Advocate. SR.No.24124

Cr1.R.C.No.215 of 2021

SR-II (CO)
RVM(18/08/2021)