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4IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.7323 of 2022

N.Chenniappan,
S/o.Nachimuthu Gounder

...Petitioner

Vs

The State represented by,
The Inspector of Police,
Uthukuli Police Station,
Tiruppur District.
(Crime No.441 of 2019)

...Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, pleaded to modify the conditions imposed in order dated 24.01.2022 passed in Cr.M.P.No.26 of 2022 on the file of District Munsif-cum-Judicial Magistrate, Uthukuli and return the original R.C.Book for the vehicle bearing Regn.No.TN-37-AJ-1337, Mahindra Max bearing Engine No.AB41J29408, Chassis No.MAIZG2ABA41J38314 without insisting for production of the same as and when required before the Trial Court.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to modify the conditions imposed in order dated 24.01.2022 passed in Cr.M.P.No.26 of 2022 on the file of District Munsif-cum-Judicial Magistrate, Uthukuli and return the original R.C.Book for the vehicle bearing Regn.No.Tn-37-AJ-1337, Mahindra Max bearing Engine No.AB41J29408, Chassis No.MAIZG2ABA41J38314 without insisting for production of the same as and when required before the Trial Court.

2. The learned counsel for the petitioner would submit that the petitioner is the owner of Mahindra Max vehicle bearing Registration.No.TN-37-AJ-1337 with Engine No.AB41J29408 and

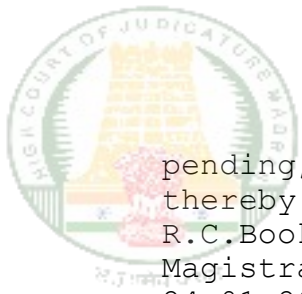


Chassis No.MAIZG2ABA41J38314. The vehicle was stolen by the accused. Based on the complaint given by the petitioner a case in Crime No.441 of 2019 was registered by the Inspector of Police, Uthukuli Police Station. Thereafter, during the course of investigation, the vehicle was recovered by the respondent police and produced before the learned Judicial Magistrate, Avinashi.

3. The learned counsel for the petitioner would further submit that the petitioner being a owner, victim and competent claimant had filed petition for return of vehicle in C.M.P.No.7394 of 2019. By an order dated 23.10.2019 the learned Judicial Magistrate, Avinashi directed the respondent police to return the vehicle back to the petitioner subject to the following conditions. The conditions imposed are held under:-

- i. The petitioner shall produce an affidavit of undertaking.
- ii. The petitioner is hereby directed to execute bond for a sum of Rs.3,00,000/- along with two sureties for the like sum.
- iii. The petitioner and his sureties shall produce their identity and permanent resident proof.
- iv. The petitioner shall produce original R.C. book, insurance certificate after paying Road taxes if any.
- v. The petitioner shall not transfer, alienate, encumber or dispose of the vehicle in any manner pending disposal of the case.
- vi. The petitioner shall produce the vehicle as and when require by the Court.
- vii. The petitioner shall take the photograph of the property in colour and file the negative and three prints in Court. On the reverse side photograph he should make an endorsement to the effect that he will not dispute the identity of property in photograph at the time of trial.
- viii. The Head Clerk of this Court shall attest the photograph to the effect that the image in the photograph is that of the property.
- ix. The respondent police shall identify the petitioner.

4. The petitioner after complying all the conditions took return of the vehicle. Thereafter, completing the investigation, the final report was filed by the respondent police and the case was taken on file by the learned District Munsif-cum-Judicial Magistrate, Uthukuli in C.C.No.50 of 2020. Since the case was



pending, the petitioner was unable to sell the vehicle and thereby the petitioner had filed petition seeking for return of R.C.Book, whereas, the learned District Munsif-cum-Judicial Magistrate, Uthukuli had passed the Impugned Order dated 24.01.2022 directing the petitioner to execute a bond for Rs.1,00,000/- with one blood surety for the same amount and that he should produce the R.C.Book as and when directed by the Court.

5. The learned counsel for the petitioner would further submit that the petitioner is not an accused and he being the owner of the vehicle is a victim and competent claimant. He would submit that it is a case of theft of vehicle and the production of the R.C.Book is not required for deciding the case of theft and thereby he would seek to set aside the order passed by the learned Magistrate and seek for return of the original R.C.Book without insisting for production of the same as and when required before the Trial Court.

6. The learned Additional Public Prosecutor for the respondent would submit that the petitioner is the owner of the vehicle and he is the victim and competent claimant.

7. Heard both sides and perused the materials available on record.

8. It is the case of the petitioner that the petitioner is the owner of the vehicle and his vehicle was stolen by the accused and that he is a victim and a competent claimant. The case has been pending from the year 2019 and the petitioner contending that value of the vehicle is deteriorating day by day had intended to sell the vehicle and thereby he had filed an application seeking for return of the original R.C.Book without insisting for production of the same as and when required before the Trial Court, whereas, the Trial Court had dismissed the same. It is seen that the Trial Court without taking into consideration the requirement of the petitioner, has dismissed the application.

9. It is profitable to refer to Rule 257 of the Criminal Rules of Practice, 2019, with regard to return of the properties pending enquiry:

"257. Return of properties pending enquiry:-

(1) Subject to the procedure laid down in special statutes, the Court may give custody of jewels, vehicles, cash and other articles under Section 451 of the Code, to competent claimants without imposing onerous conditions. It is not necessary in all cases to impose a condition that the property shall be preserved and produced as and when required. A panchanama in Judicial



(3) Seized idols shall be photographed and after drawing the panchanama in the said Judicial Form No.82, the same shall be handed over to the nearest Government museum and the said fact shall be intimated directly to the Secretary to Government, Tourism, Culture and Religious Endowment Department, Fort St. George, Chennai - 600 009 or Secretary to Government, Revenue/Hindu 100 The Criminal Rules of Practice, 2019 100 Religious Institutions, Art and Culture Department, Puducherry, as the case may be, with a copy of the said communication to the High Court for information."

As per Rule 257(1) of the Criminal Rules of Practice, the Court may give custody of Jewels, Vehicles, Cash and other articles under Section 451 of the Code, to competent claimants without imposing onerous conditions.

10. It is only a case of theft of vehicle. Admittedly, the petitioner is the owner of the vehicle. In the opinion of this Court, the learned Judge without taking into consideration the need and necessity for production of the vehicle, has dismissed the application. The learned Judge has not applied his mind whether the R.C.Book is necessary for trial or not. The issue to be dealt during trial is with regard to theft of vehicle. In such circumstances, no prejudice will be caused to the respondent police during trial by non-production of the original R.C.Book when it can be substituted by a secondary evidence. Without considering the same, the learned Judge had mechanically dismissed the application and had directed the petitioner to



produce the same as and when required. When the petition itself has been filed stating that the original R.C.Book was required for selling the vehicle, the Court can very well prepare the panchanama in Judicial Form No.82 and the panchanama can be used as a evidence in the case. Further, the photographs of the vehicle can be taken and it can also be certified under Section 65-B of the Evidence Act, 1872 and such photographs can be used as secondary evidence and the petitioner can also be directed to produce the certified/attested true copy of the R.C.Book to be produced as a secondary evidence. As stated above, the condition imposed by the petitioner is onerous.

11. In view of the above, the impugned order passed by the learned District Munsif-cum-Judicial Magistrate, Uthukuli is set aside and a direction is issued to the learned Magistrate to return the original R.C.Book without insisting to produce the same as and when required on the following conditions:-

(i) the photographs of the vehicle and the certified/attested copy of the R.C.Book shall be taken and they shall be certified under Section 65 of the Evidence Act, 1872 so that it can be marked as a secondary evidence during the trial.

(ii) the certified/attested copy of the R.C.Book shall be produced before the Court.

(iii) The petitioner shall execute a bond for a sum of Rs.10,000/- and he shall also file a sworn affidavit of undertaking to appear before the Trial Court as and when required, to give evidence during trial.

12. This Criminal Original Petition stands allowed with the above observations and directions.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

1. The District Munsif-cum-Judicial Magistrate,
Uthukuli.
2. The Judicial Magistrate,
Avinashi.
3. The Inspector of Police,
Uthukuli Police Station,
Tiruppur District.



4. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.S.Kaithamalai, Advocate, S.R.No.22188

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AK II(CO)
KKV/21/04/2022