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Crl.R.C.No.133 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.133 of 2023

R. Velumani

... Petitioner

Vs.

State, represented by its
Inspector of Police,
City Crime Branch,
Coimbatore,
(Cr.No.26 of 2022)

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to call for the records and set aside the order dated 02.12.2022 made in Crl.M.P.No.42112 of 2022 on the file of the Judicial Magistrate No.VII, Coimbatore.

For Petitioner : Mr.C.Gunasekaran

For Respondent : Mr.V. Meganathan
Gov. Advocate (Crl.Side)



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ORDER

Challenging the order, dismissing the petitioner's application filed under Sections 451 and 457 of Cr.P.C, passed by the Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.42112 of 2022, dated 02.12.2022 to return the vehicle, the present Revision has been filed.

2. A complaint has been lodged by one Venkatesan against one Suresh, Gunasekaran and the petitioner herein alleging that the above said persons falsely represented the defacto complainant that the land measuring 35 acres situate at Pappampatti Village, Coimbatore jointly belongs to the above said Suresh and other persons and if the said land is promoted as house sites, they will gain a huge profit. Pursuant to which, the defacto complainant entered MOU with said Suresh and accordingly, they have entered MOU with them and gave Rs.64 lakhs. Thereafter, as the Suresh and others did not come forward to enter MOU as promised by them, the complainant demanded return of money. They gave Rs.3,00,000/- to him.



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On enquiry, the complainant came to know that the land in which the above said Suresh and others stated to have shares, does not belong to them. Thus they have cheated and defrauded the complainant the amount of Rs.61 lakhs. The complaint was registered in Crime No.26 of 2022 for the offence under sections 120B, 406, 420, 506(i) IPC. During the course of investigation, the vehicle viz, Skoda Kushak car bearing Registration No.TN 37 D 9779 belonging to the petitioner was seized and produced before the court below in PR.No.183 of 2022. Along with the vehicle, the respondent has also seized Sale deed bearing Document No.1100 of 2021, City Union Bank Pass Book and Samsung Mobile Phone of the petitioner. The petitioner filed an application before the court below seeking to grant interim custody of the vehicle along with document, pass book and cell phone. The court below dismissed his petition on the ground that investigation is still pending and there may be a chance of petitioner selling or alienating the properties seized by the respondent.

3. The learned counsel for the petitioner submitted that the petitioner



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is the 2nd accused in Crime No.26 of 2022 registered for the offences punishable under sections 120B, 406, 420, 506(i) IPC. The petitioner is involving in real estate business; he only acted as mediator to purchase the said property and he is no way connected with the alleged offences. The vehicle seized by the respondent police was purchased by the petitioner out of his own money and now the said vehicle was hypothecated with the private bank. He further submitted that if the vehicle is kept unused for a short period, the engine will get spoiled and the entire car become scrap and the same will cause irreparable loss to the petitioner. Further, the original sale deed bearing document No.1100 of 2021 which is in respondent custody may get lost and if the mobile phone is kept idle for a short period, it will cause irreparable loss to the petitioner. Thus he prayed for returning of properties seized by the respondent during the course of investigation.

4. The learned Govt. Advocate (crl.side) submitted that the case is still under investigation; pending investigation, returning of properties



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seized would extensively affect the investigation. Thus, he vehemently objected for release of properties seized.

5. On perusal of records, the fact reveals that the respondent police, in pursuance of the complaint given by the defacto complainant, registered a case in Crime No.26 of 2022 for the offences punishable under sections 120B, 406, 420, 506(i) IPC. During the investigation, the respondent police, seized the vehicle bearing Registration No.TN 37 D 9779 along with Sale deed bearing Document No.1100 of 2021, City Union Bank Pass Book and Samsung Mobile Phone of the petitioner and the same were produced before the Court in PR.No.183 of 2022. Admittedly, the petitioner is the owner of the said vehicle and the same has been recovered from the petitioner during the course of investigation along with sale deed, Pass Book and Samsung Mobile Phone. Now, the petitioner is seeking interim custody of the properties seized including the vehicle during the course of investigation. The vehicle was stationed in an open yard subject to natural calamities and unconditional weather conditions which would



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depreciate the value of the vehicle.

6. In ***Sunderbhai Ambalal Desai vs State Of Gujarat*** (cited supra), the Hon'ble Supreme Court in paragraph No.17 has held as follows:

"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."

7. Considering the dictum of the Supreme Court cited supra and also taking note of the other facts and circumstances of the case and the gravity of the offence involved, I am inclined to return the vehicle to temporary custody of the petitioner along with other articles seized during the course of investigation, on certain conditions.



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8. Accordingly, the impugned order **passed by the Court below is set aside** and the respondent police is directed to return the following items, viz.,

1. Skoda Kushak car bearing Registration No.TN 37 D 9779;
2. Registered Sale Deed bearing Doc.No.1100 of 2021;
3. City Union Bank Pass Book bearing A/c.No.05300 10021 88957;
4. Samsung Mobile Phone, Model No.SM A127 /DS

to temporary custody of the petitioner, on complying the following conditions:

- i. the petitioner shall prove his ownership of the vehicle by producing the R.C.Book and other relevant records;
- ii. the petitioner shall not alienate or encumber the vehicle in any manner;
- iii. the petitioner shall execute a bond for a sum of Rs.5,00,000/- (Rupees five lakhs only) before the Judicial Magistrate No.VII, Coimbatore.
- iv. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future;



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- v. the petitioner shall take photograph of the vehicle; and
- vi. the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

9. Accordingly, the Criminal Revision is allowed.

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msr

Index:yes/no

Internet:yes/no

To

1. The Judicial Magistrate No.VII, Coimbatore.
2. The Inspector of Police,
City Crime Branch,
Coimbatore,
3. The Public Prosecutor,
High Court of Madras, Chennai.



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V.SIVAGNANAM, J.,

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