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Crl.R.C.No.1662 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1662 of 2023

Shyamsudheer

... Petitioner

Vs.

1.State By: The Inspector of Police,
N-3 Muthiyalpet Police Station,
Chennai 600104.
(Cr.No.956 of 2020).

2.A.Velmurugan

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.6092 of 2021 dated 16.8.2021 (on the file of the 16th Metropolitan Magistrate Court, George Town, Chennai) and set- aside the same and order for return the petitioner's property of CAR – Mahindra Scorpio CAR – Registration No.KL 01 BC 4131, seized in Cr.No.956 of 2020 on the file of the respondent No.1 Police to the petitioner.

For Petitioner : Mr.P.Pugazhenthii for
Ms.S.Nadhiya

For Respondents : Mr.A.Damodaran,
Additional Public Prosecutor-R1
Mr.S.Ayyappan-R2

ORDER

The petitioner is the owner of the vehicle, namely, Mahindra Scorpio car bearing Registration No.KL 07 BC 4131 which was seized by the 1st respondent



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Police in Crime No.956 of 2020 for offence under Sections 419, 364A, 324, 342, 464, 465, 468, 392 and 395 of IPC. The petitioner filed a petition seeking interim custody of the said vehicle under Section 451 r/w 257 of Cr.P.C., in Crl.M.P.No.6092 of 2021 in Crime No.956 of 2020 before the learned XVI Metropolitan Magistrate, Egmore, Chennai. The learned Magistrate, by order, dated 16.08.2021 dismissed the return of property petition, against which, the present criminal revision case.

2.Gist of the case is that on 22.08.2020, one Diwan Akbar lodged a complaint to the 1st respondent Police stating that he is running a company in the name of M/s.Digi Scans Private Limited, Chennai. When he went to his friend's house, four unknown persons came in Scorpio car claiming that they are from National Investigation Agency and forcibly took him in their vehicle and yet another person. They proceeded to ECR and kept the defacto complainant in a secluded house where he was attacked using weapons and thereafter, they demanded Rs.3 Crores from the defacto complainant. On 17.08.2020, the defacto complainant was instructed to call his mother and brother pursuant to the demand of money. Thereafter, the defacto complainant's brother arranged Rs.2 Crores and the same was handed over to the accused. Apart from it, passport and other documents collected forcibly



from the defacto complainant and his family. This had taken place in various places in and around Chennai. The defacto complainant kept in captivity and ransom collected for more than three days. On the complaint of the defacto complainant, the above case came to be registered. During investigation, the 1st respondent Police arrested 13 persons, recorded their statements, recovered articles and also remanded them to judicial custody.

3.During investigation, Mahendra Xylo car bearing registration No.TN 02 BH 5645, Mahindra Scorpio car bearing registration No.KL 07 BC 4131, Swift Desire car bearing registration No.TN 14 V 1253, Red Colour i10 car bearing registration No.TN 10 Z 2044, Venu SX Burbo car bearing registration No.TN 05 VZ 4559 and Hundai Verna car bearing registration No.TN 07 BV 9545 and also an amount of Rs.49,85,300/- recovered from various accused. On completion of investigation, charge sheet filed before the learned XVI Metropolitan Magistrate, Egmore, Chennai and the same assigned as P.R.C.No.57 of 2022 on 29.06.2022. The case has been periodically adjourned since all the accused are absenting themselves alternatively and now, the case is posted on 17.10.2023.



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4.The contention of the petitioner is that admitted case of the prosecution is that the petitioner is the owner of the vehicle Mahindra Scorpio bearing Registration No.KL 07 BC 4131, he entrusted the vehicle to the 2nd respondent/A6, who acted as an acting driver to the petitioner. The petitioner hails from the State of Kerala and acting driver is from Melapatti village, Kadamalaikundu Post, Theni district. For the purpose of his business, the petitioner used to visit Theni district and surroundings regularly, at that time, the acting driver/2nd respondent/A6 was engaged since he was familiar with the route and terrain. During the relevant point of time, the petitioner entrusted the vehicle with the 2nd respondent/A6 and thereafter, due to COVID-19 pandemic, the petitioner unable to contact and reach the 2nd respondent/A6 and also unable to ascertain whereabouts of the 2nd respondent/A6 of vehicle. This has been taken advantage by the 2nd respondent/A6 who joined the other accused in this case and committed the offence. He further submitted that apart from his vehicle, few more cars seized in this case and these cars returned back to the claimants by the Court. As far as this petitioner is concerned, since the vehicle has got Kerala State registration and investigation was also pending, the lower Court dismissed the petitioner's petition.



5. On instructions, the learned counsel for the petitioner submitted that the vehicle will not be alienated or tampered with and also file an affidavit to the effect giving all particulars and undertaking.

6. The learned Additional Public Prosecutor appearing for the 1st respondent Police narrating the sequence of investigation and submitted that in this case, all the accused arrested and now, charge sheet filed which is pending committal in P.R.C.No.57 of 2022 before the Court below. He further submitted that as far as this petitioner is concerned, he is not an accused, he entrusted the vehicle to his acting driver/2nd respondent/A6 who conspired with other accused in commission of offence. The petitioner is the owner of the vehicle and only apprehension is that during trial, when the vehicle is required, it will be difficult to contact the petitioner since he hails from Kerala State. In the process, the trial would get delayed, for that reason alone, the prosecution has got objection.

7. The learned counsel appearing for the 2nd respondent confirmed that the vehicle belongs to the petitioner and he has got no objection for the vehicle to be handed over to the petitioner.



8.Considering the submissions and on perusal of the materials, it is not in dispute that the petitioner is the owner of the vehicle and he is not an accused in this case. The petitioner has entrusted his vehicle to his acting driver/2nd respondent during the COVID-19 pandemic, which is not disputed. The petitioner to prove his ownership of the vehicle produced the registration certificate and other documents.

9.It is seen that from the date of seizure, the vehicle is kept in open space exposing to vagaries of weather and thereby, the value of the vehicle is getting diminished. The Hon'ble Apex Court in the case of “***Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290***”, had given guidelines in the cases of return of property to the owner.

10.Further, this Court in the case of “***Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station, Nagapattinam District in Crl.R.C.No.501 of 2011***”, considered the case of “***David Vs. Sakthivel, Inspector of Police-cum-Station House Officer reported in 2010 1 MLJ (Crl.) 929***” and ordered return of seized vehicle to the owner, which is being consistently followed in other cases.



11.Considering the submissions made on either side and the investigation

completed and charge sheet filed and the vehicle has been kept in open yard and the petitioner being a owner of the vehicle, this Court is inclined to return the vehicle to the petitioner. The 1st respondent police is directed to grant custody of the said vehicle viz., Mahindra Scorpio car bearing Registration No.KL 07 BC 4131 to the petitioner after causing necessary photographs and panchnama, within a period of 7 days from the date of compliance of the below mentioned condition Nos.(i) to (iii):-

(i)The petitioner shall execute a personal bond for a sum of Rs.5,000/- (Rupees five thousand only) with two sureties each, for a like sum to the satisfaction of the learned XVI Metropolitan Magistrate, Egmore, Chennai. The petitioner and the sureties shall affix their photographs and give the copies of their Aadhaar Card;

(ii)The petitioner shall not alter or alienate the vehicle in question till the completion of Trial.

(iii)The petitioner shall take photograph of the vehicle and submit the same along with Compact Disc duly certified under Section 65-B of the Indian Evidence Act, 1872.

(iv)The petitioner shall submit a photostat copy of R.C.Book before the XVI Metropolitan Magistrate, Egmore, Chennai.



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(v) The petitioner shall produce the vehicle as and when directed to do so.

12. In view of the above, the order dated 16.08.2021 made in Crl.M.P.No.6092 of 2021, passed by the learned XVI Metropolitan Magistrate, Egmore, Chennai is set aside and the revision is, accordingly, allowed.

17.10.2023

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes/No

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To

1. The XVI Metropolitan Magistrate Court,
George Town, Chennai.

2. The Inspector of Police,
N-3 Muthiyalpet Police Station,
Chennai 600104.

3. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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