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Crl.R.C.No.1555 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1555 of 2023

Mathiyalagan

... Petitioner

Vs.

The Inspector of Police,
Kondalampatti Police Station,
Salem District.
(Crime No.101/2021)

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records and to set aside the order passed by the learned Judicial Magistrate No.V, Salem in Crl.M.P.No.2040 of 2021, dated 17.09.2021.

For Petitioner : Mr.V.Ramanareddy

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl. side)

ORDER

Challenging the orders, dated 17.09.2021 passed in Crl.M.P.No.2040 of 2021, by the learned Judicial Magistrate No.V, Salem, the present Criminal Revision is filed by the petitioner.



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2. The revision petitioner / third party is the owner of the vehicle viz., Maruti Swift Dzire bearing Registration No.TN-73-4828 which was seized by the Police in connection with Crime No.101/2021 of Kondalampatti Police Station, Salem.

3. The case of the prosecution is that on 04.02.2021 at about 18.00 hours, the respondent Police during routine vehicle check up, intercepted the Maruti Swift Dzire Car bearing Registration No.TN-73-4828 near Nattamangalam Marriage Hall at Salem District with a sticker mentioning as “Special District Revenue Officer DRO NG 544, Erode” and a case was registered in Crime No.101/2021 against the driver of the Car for the offence punishable under Section 171 I.P.C., Section 3 of the State Emblem of India (Prohibition of Improper Use) Act, 2005 r/w. Section 7 of the State Emblem of India (Regulation of use) Act 2007. The driver of the car was arrested and the car was also seized.

4. Thereafter the revision petitioner who is the owner of the Car filed a petition in Crl.M.P.No.2040 of 2021 under Section 451 r/w.



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457 Cr.P.C., before the Judicial Magistrate No.V, Salem, seeking interim custody of the vehicle viz., Maruti Swift Dzire bearing Registration No.TN-73-4828 stating that the Car was misused by the driver after taking the same from a Mechanic shop at Salem where he had left the Car for repair. The Judicial Magistrate No.V, Salem dismissed the petition on the ground that if the Car is returned to the petitioner the accused may use the same for committing similar offence and that the vehicle is also the material object which has got to be marked during trial. Aggrieved over the same, the present Criminal Revision is filed.

5. Mr.V.Ramanareddy, learned counsel for the petitioner would contend that the petitioner is the owner of the vehicle and he had sent his Car for repair to a Mechanical shop at Salem and that the accused Moorthy who is not known to him, had taken his car and committed the offence. His further contention is that the Car was seized in the year 2022 and it is kept idle in the Police station in an open space and therefore the value of the vehicle had already diminished and prayed for return of the vehicle.



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6. Per contra, Mr.R.Vinothraja, learned Government Advocate (Crl. side) appearing for the respondent contended that the accused had misused the Car with Government Emblem and therefore, it may not be appropriate to return the Car to the petitioner.

7. It is not the case of the prosecution that the accused is the driver of the revision petitioner. The specific contention of the revision petitioner is that the Car was taken from a Mechanic Shop at Salem where he had given it for maintenance. It is true that if the vehicle is kept idle in an open space in the Police Station, the value of the same would diminish over a period of time.

8. In this back drop, it is relevant to refer a decision of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai and others Vs. State of Gujarat*** reported in (2002) 10 SCC 283, in which it is held thus:

“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



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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.

In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company, then insurance company be informed by the Court to take possession of the vehicle, which is not claimed by the owner or a third person. If insurance Company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.”

As such, considering the ratio laid down by the Hon'ble Supreme Court, this Court is inclined to grant interim custody of the vehicle to the petitioner.



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9. Accordingly, this Criminal Revision is allowed and the impugned order in Crl.M.P.No.2040 of 2021 dated 17.09.2021 passed by the learned Judicial Magistrate No.V, Salem, is set aside and the interim custody of the vehicle is given to the petitioner on the following conditions :

- i. The petitioner shall prove his ownership of the vehicle by producing R.C.Book and other relevant records;
- ii. The R.C.Book shall be deposited in the Court and the Court shall issue a certificate in this regard;
- iii. The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) before the trial Court;
- iv. The Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing Registration No. TN-73-4828 and such panchanama can be used in evidence;
- v. The Court shall take photograph of the vehicle bearing Registration No. TN-73-4828 and certify the same under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence;



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- vi. The petitioner shall not alienate or encumber the vehicle in any manner whatsoever;
- vii. The petitioner shall give an undertaking that he would not use the vehicle for any illegal activities in future; and
- viii. The petitioner shall also produce the vehicle as and when required by the court below and by the respondent police.

20.09.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

To

1. The Judicial Magistrate No.V,
Salem.
2. The Inspector of Police,
Kondalampatti Police Station,
Salem District.



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R. HEMALATHA, J.

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