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Crl.R.C.No.1691 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1691 of 2023

Arun Kumar

... Petitioner

Vs.

State Rep by,
Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 08.08.2023 passed by the Learned Judicial Magistrate No.V, Coimbatore in C.M.P.No.33810 of 2023 and allow the above criminal revision case.

For Petitioner	:	Mr.Manojkumar.N
For Respondent	:	Mr.A.Damodaran, Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed to set aside the order, dated 08.08.2023 made in C.M.P.No.33810 of 2023 by the learned Judicial Magistrate No.V, Coimbatore.

2.The order passed by this Court on 11.10.2023 is as follows:



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“The learned counsel for the petitioner submits that the petitioner had purchased Yamaha two wheeler motorcycle bearing Registration No. TN-57-BY-4170 from one Athiyappan, S/o. Ashok Kumar. The vehicle was purchased on 04.07.2023 and the sale receipt and delivery note have been produced by the petitioner. Thereafter, the petitioner was taking steps to change the registration certificate in his name. In the meanwhile, on 08.07.2023, the petitioner had gone to his native at Sathyamangalam, leaving his vehicle in his mansion where he was staying. The petitioner is employed as a collection agent in a private bank. After returning from his native on 10.07.2023, he found his bike missing and hence, registered a complaint with the respondent police on 11.07.2023. Thereafter, he came to know that the vehicle was recovered and seized. Hence, the petitioner filed a petition under Section 451 of Cr.P.C. before the Lower Court in C.M.P.No.33810 of 2023 and the Lower Court had dismissed the petition by order dated 08.08.2023 for the reason that the registration certificate is not in the name of the petitioner. The petitioner submits that the vehicle has been kept idle for long time, which would diminish the physical features and its value. He further submitted that as a collection agent, his usage of the vehicle for his employment is very much necessary and hence, filed the present revision petition.

2. The learned Additional Public Prosecutor submitted that the petitioner is the complainant in Crime No.387 of 2023. On his complaint, a case has been registered for the offence under Section



379 IPC. In the complaint, the petitioner had given the particulars of the missing vehicle. Since the registration certificate was not in the name of the petitioner, the Lower Court had rightly dismissed the return of property petition.

3. The only concern is that the owner of the vehicle Athiyappan should not have any objections at a later stage if the vehicle is returned to the petitioner herein. In this regard, the learned counsel for the petitioner seeks a small accommodation to get further instructions.

4. Post the matter on 18.10.2023.”

3.In continuation and conjunction to the above said order, dated 11.10.2023, this Court is now passing the following order.

4.Today, the learned counsel for the petitioner produced the affidavit of the erstwhile owner of the vehicle Athiyappan who confirmed that he sold the vehicle to the petitioner herein on 04.07.2023 and issued the delivery note and receipt after receiving the sale amount. The registration of the vehicle is yet to be changed in the name of the petitioner and he has got no objection for returning the vehicle bearing registration No.TN 57 BY 4170 to the petitioner.



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5.Considering the submissions and on perusal of the materials, it is seen that on the complaint of the petitioner, a case in Crime No.387 of 2023 registered for offence under Section 379 IPC on 11.07.2023. During investigation, the vehicle of the petitioner has been recovered and seized. Before registration of the vehicle in the name of the petitioner, the said vehicle has been stolen by the accused. Since the registration certificate is not in the name of the petitioner, the Court below dismissed the petition on 08.08.2023.

6.It is seen that from the date of recovery, 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.

7.Considering the fact that the petitioner is the owner of the vehicle and erstwhile owner of the vehicle confirmed by way of affidavit that the petitioner purchased the vehicle from him and the vehicle has been kept in open yard exposing to vagaries of weather, this Court is inclined to return the vehicle to the petitioner. The respondent police is directed to grant custody of the said



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vehicle viz., Yamaha FZ bearing Registration No.TN 57 BY 4170 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 Judicial Magistrate No.V, Coimbatore. 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 learned Judicial Magistrate No.V, Coimbatore.

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



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M.NIRMAL KUMAR, J.

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8.In view of the above, the order dated 08.08.2023 made in C.M.P.No.33810 of 2023, passed by the learned Judicial Magistrate No.V, Coimbatore is set aside and the revision is, accordingly, allowed.

18.10.2023

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Judicial Magistrate Court No.V,
Coimbatore.
- 2.The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Madras.

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