



Crl.R.C.No.1953 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1953 of 2023

Boopathi

... Petitioner

Vs.

State Represented by
Inspector of Police,
Fairland Police Station,
Salem District (Crime No.744/2022).

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set-aside the order dated 16.08.2023 made Crl.M.P.No.823 of 2023, on the file of Judicial Magistrate No-V, Salem.

For Petitioner : Mr.Mohamed Saifulla

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed to set aside the impugned order, dated 16.08.2023 in Crl.M.P.No.823 of 2023 passed by the learned Judicial Magistrate No.V, Salem.



2.The petitioner filed a petition under Section 451 of Cr.P.C., before the learned Judicial Magistrate No.V, Salem in Crl.M.P.No.905 of 2023 to return the car namely BMW bearing registration No.TN 07 BV 5137 which was seized from the petitioner as Case Property in Crime No.744 of 2022. The learned Magistrate, by order, dated 16.08.2023 dismissed the same finding that the return of vehicle at the present stage may lead to disturbance of the investigation. Challenging the same, the present Criminal Revision Case is filed.

3.The contention of the petitioner is that the petitioner and the defacto complainant Ekambaram were jointly doing real estate business. Since the said Ekambaram needed some money, he asked the petitioner to develop a property by designing a layout. The petitioner developed the property of Ekambaram and sold the plots. As and when the plots sold, the sale consideration to be apportioned as per the agreed terms. Later, the defacto complainant became greedy and demanded more money from the petitioner. The petitioner by his hard work and through his contacts developed the property, made huge investments. With his expertise, he could sell the



property for reasonable price. The learned counsel for the petitioner submitted that there was some dispute with regard to sharing of profit, the defacto complainant retained the documents scuttling the petitioner to execute the sale deed. Due to such act, the petitioner suffered loss and now he is facing trouble. The defacto complainant in this case engaged henchmen, attacked the petitioner and, took away the documents and valuables from him. The petitioner sustained serious injury and he took treatment as inpatient. On the complaint of the petitioner's friend Praveen kumar, a case in Crime No.742 of 2022 for offence under Sections 147, 148, 294(b), 323, 324, 364A and 506(2) of IPC came to be registered on 02.11.2022. On coming to know that, a case has been registered, as a counterblast, the said Ekambaram lodged a false compliant against the petitioner in Crime No.744 of 2022.

4.The learned counsel further submitted that the said vehicle of the petitioner has been projected as though he purchased the vehicle with the money earned through the sale of plots and not handing over the sale consideration to Ekambaram and thereby, cheated him. The petitioner



already in real estate business, with his own money, he purchased the above said vehicle. Of course, there is some dispute between the petitioner and Ekambaram with regard to development of the property. But that does not mean the petitioner is a man of no means and he cannot buy BMW car. He further submitted that the said vehicle is kept in open yard exposing to vagaries of weather. Hence, prays for setting aside the impugned order of the lower Court.

5.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that the petitioner was arrested on 03.11.2022 and the vehicle as well as the documents seized from the petitioner produced before the lower Court and the lower Court had given C.P.No.339 of 2023 on 16.06.2023. During the course of investigation, it revealed that on 02.11.2022, one Praveen Kumar who is the friend of Boopathy lodged a complaint against Ekambaram and FIR in Crime No.742 registered. The petitioner purchased the BMW car by paying Rs.13 lakhs with the cheated amount of the defacto complainant and the same is admitted in his confession. Hence, the car was seized and detained.



6.Considering the submissions and on perusal of the materials, it is

not in dispute that the petitioner is the owner of the BMW car which was seized from the petitioner in the above case on the charge of cheating. It is not in dispute that there is some business transaction between the petitioner and the defacto complainant in selling plots. Now, the investigation is at the initial stage and it is too early to say that the petitioner had purchased the car by cheating the defacto complainant.

7.It is seen that from the date of recovery, the vehicle is kept in open yard 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.

8.In view of the above, this Court is inclined to return the vehicle to the petitioner. The respondent police is directed to grant custody of the said vehicle viz., BMW bearing Registration No.TN 07 BV 5137 to the petitioner after causing necessary photographs and panchnama, within a period of 7



Crl.R.C.No.1953 of 2023

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.10,000/- (Rupees ten thousand only) with two sureties each, for a like sum to the satisfaction of the learned Judicial Magistrate No.V, Salem. 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 self attested photostat copy of R.C.Book before the learned Judicial Magistrate No.V, Salem.

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



Crl.R.C.No.1953 of 2023

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9. In view of the above, the impugned order, dated 16.08.2023 is set aside and the revision is, accordingly, allowed.

24.11.2023
(2/2)

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No

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To

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



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Crl.R.C.No.1953 of 2023

M.NIRMAL KUMAR, J.

vv2

Crl.R.C.No.1953 of 2023

24.11.2023
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