



Crl. O.P. No.26877 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.O.P No.26877 of 2023

Karthi

.. Petitioner

Vs.

The State, rep. By
The Sub-Inspector of Police,
Salem Town Police Station,
Salem District.
(Crime No.4 of 2022)

..Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Cr.P.C, to set aside the docket order dated 02.09.2023 passed by the Judicial Magistrate No.I, Salem in CMP No. unnumbered of 2023 in C.C. No.1126 of 2022 and order interim custody of the vehicle ROYAL ENFIELD Motor Cycle bearing Reg. No.TN 34 AB 7632 to the petitioner in C.C. No.1126 of 2022 on the file of the Judicial Magistrate No.I, Salem.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate (Crl.Side)

ORDER



The petitioner who is the owner of the ROYAL ENFIELD Motor Cycle bearing Registration No.TN 34 AB 7632 entrusted the same to an Auto Consultant to sell the two wheeler. The said Auto Consultant by name Rambalaji, had sold the two wheeler to one Praveen for Rs.1,60,000/- received Rs.25,000/- as advance and handed over the vehicle. Meanwhile, the said Praveen was involved in a case in Crime No.27 of 2022 on the file of Kamasamuthram Police Station, was arrested along with vehicle bearing Registration No.TN 34 AB 7632. The said vehicle was taken as a case property and produced before the learned Additional Civil Judge and Judicial Magistrate (FC), Bangarpet.

2. Knowing about the facts, the petitioner herein is the owner of the vehicle had approached the learned Additional Civil Judge and Judicial Magistrate (FC), Bangarpet, filed an Application for releasing the vehicle and placed him at interim custody. Considering the request and verifying the ownership as well as identity of the vehicle, the learned Additional Civil Judge and Judicial Magistrate (FC), Bangarpet vide order dated 20.04.2022 had entrusted the custody of the vehicle to the petitioner herein on certain conditions. One of the condition, that the petitioner shall produce the aforesaid vehicle before the Investigation



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Officer or before the Court as and when called for.

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3. After taking interim custody of the vehicle, the Salem Town Police which is investigating the FIR No.4 of 2022, that is the complaint of Rambalaji, Auto Consultant to whom the petitioner had entrusted the vehicle for sale, thought fit that this vehicle has to be taken possession in that case and accordingly, the vehicle was seized from the petitioner herein and produced before the learned Judicial Magistrate, No.I, Salem.

4. Narrating the above facts, the petitioner herein had moved the learned Judicial Magistrate No.I, Salem for interim custody of the vehicle, but that was declined by the Magistrate. Further, Revision filed before this Court in Crl.R.C. No.1261 of 2022, also dismissed on the ground that the final report filed and taken cognizance by the learned Judicial Magistrate, Salem in C.C. No.271 of 2022 and therefore, instead of entrusting the interim custody of the vehicle to the petitioner, the trial itself can be completed within a period of three months.

5. Citing the change of circumstances, the petitioner has once again approached the learned Magistrate seeking interim custody but the Application been returned with an endorsement that since the earlier petition for interim custody made in CMP. No.1477 of 2022, dismissed



on 13.05.2022, the second petition is not maintainable.

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6. The learned counsel appearing for the petitioner submitted that the second petition for return of property was based on the change of circumstances. The first petition was filed before completion of investigation and the second petition was filed after completion of investigation and final report taken cognizance. Further referring the judgment of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***(2002 10 SCC 219)***, vehicle need not be detained in Court custody, exposing to rain and shine and no prejudice to be caused to the prosecution, if the interim custody given to the petitioner.

7. Further more, the learned counsel also submitted that the petitioner as the owner of the vehicle with an undertaking before the learned Additional Civil Judge and Judicial Magistrate (FC), Bangarpet, has taken interim custody of the vehicle on condition that he should produce before the Court at Bangarpet as and when called for. Whiles, the vehicle, which is now in the custody of the Court cannot be produced by the petitioner before the Bangarpet Court, if it is directed to produce the vehicle.



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8. It is an admitted case that the vehicle stands in the name of the petitioner, it is also admitted that it was the petitioner who informed the Investigation Officer about the recovery of the vehicle by the Kamasamudram Police Station and his custody of the vehicle pursuant to the release order passed by the Bangarpet Court vide order dated 20.04.2022. The respondent police has taken custody of the vehicle only thereafter, under Form 91 dated 22.04.2022. Therefore, the trial Court shall entertain the second petition for interim custody of the vehicle and pass appropriate orders in tune with the guidelines issued by the Hon'ble Supreme Court.

9. With this direction, this Criminal Original Petition is disposed of.

29.11.2023

Internet : Yes/No
Index: Yes/No
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Dr.G.JAYACHANDRAN, J.



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To

1. The Judicial Magistrate No.I,
Salem.
- 2.The Additional Civil Judge and Judicial Magistrate (FC),
Bangarpet.
- 3.The Sub-Inspector of Police,
Salem Town Police Station,
Salem District.
- 4.The Public Prosecutor,
Madras High Court,
Madras.

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