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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Criminal Original Jurisdiction

Thursday, the First day of June Two Thousand and Twenty three



PRESENT

The Hon`ble Mrs.Justice R.THARANI
CRL MP(MD) . No.7803 of 2022

in
Crl.OP No.11466 of 2020

Parthasarathy

... Petitioner/Petitioner

Vs

The Inspector of Police
Andipatti Police Station,
Theni District.
(In Crime No.433/2020).

... Respondent/Respondent

Prayer in crl.MP(MD)7803 of 2022:-

This Criminal Miscellaneous petition is filed under section 482 to permit the petitioner/owner to sale the vehicles/buses bearing registrate Nos.NL 01 B 1408 and NL 01 B 1409, which were allegedly involved in Crime No.433/2020 on the file of the respondent police.

Prayer in Crl.OP(MD)11466 of 2020:-

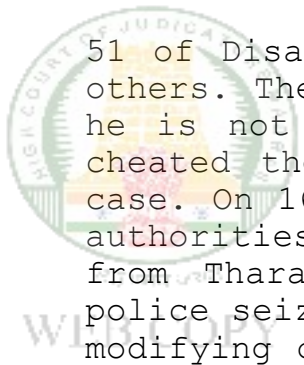
This Criminal Original petition filed under section 482 of Criminal procedure code, to modify the conditions imposed in order in Cr.M.P.No.2146 of 2020 dated 09.09.2020 passed by the Judicial Magistrate, Aundipatti, in so far as conditions 2,4 and 5 for return of the vehicles/buses bearing registration Nos.NL01B1408 and NL.01B1409.

ORDER:-

This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.B.Janarthkumar, Advocate for the Petitioner and of Mr.Nambi Selvan, Additional Public Prosecutor, for the respondent, this Court made the following order:

This petition is filed to permit the petitioner/owner to sale the vehicles/buses bearing registration Nos.NL-01-B-1408 and NL-01-B-1409, which were involved in Crime No.433 of 2020 on the file of the respondent police.

2.On the side of the petitioner, it is stated that the petitioner has filed a petition under Section 482 of Cr.P.C., in Crl.O.P.(MD)No.11466 of 2020 for return of the buses bearing registration Nos.NL-01-B-1408 and NL-01-B-1409 are registered a case in Crime No.433 of 2020 on 22.05.2020 under Sections 269, 271, 465, 468, 471, 474, 420 of IPC r/w. Section 3 of Epidemic Act and Section



51 of Disaster Management Act against one Shanumuganathan and others. The petitioner is no way connected with the above case and he is not an accused. The above named Shanumuganathan and others cheated the petitioner by fixing the buses in the above criminal case. On 16.05.2020, at Andipatti Kanavai check post, the revenue authorities and respondent police found the buses were transported from Tharavi, Mumbai to Theni with fake e-pass. The respondent police seized the vehicles. The petitioner approached this Court for modifying certain conditions and the same was allowed by this Court in Crl.O.P.(MD)No.11466 of 2020 dated 16.10.2020. The vehicles were released on 01.12.2020. During the interim custody of the vehicles, the petitioner stationed the vehicles in Karur and he was unable to pay the bank loan. The Omni industry was collapsed during the lockdown. The petitioner sustained huge loss and he was unable to pay the loan. The petitioner may be permitted to sell the vehicles.

3. On the side of the prosecution, it is stated that the property was returned to the petitioner on condition that there should not be any encumbrance in the property. This Court has modified the condition. The condition No.6 was not modified by this Court. The petitioner is bound to safe guard the vehicles till the disposal of the case.

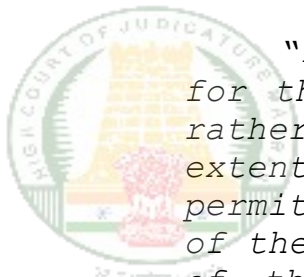
4. The learned counsel for the petitioner would rely upon a judgment of this Court in the case of **Cholamandalam DBS Finance Limited v. State** in **Crl.O.P.(MD) No.11795 of 2010**, wherein it is stated as follows:

"These criminal original petitions are allowed. The concerned lower Court shall upon production of the certificated copy of this order fix a date for production of the vehicle before it. Upon production, the lower Court shall cause photographs of the vehicle to be taken and records Panchnama thereof. The petitioner shall then be at liberty to effect sale of the vehicle. The photographs and Panochnama prepared shall be read as evidence in lieu of marking of the vehicles."

5. The learned counsel for the petitioner would rely upon a judgment of this Court in the case of **C.Ravikumar v. Gokulnath and State** in **Crl.O.P.(MD) No.425 of 2017**, wherein it is stated as follows:

"The petitioner is at liberty to effect the sale of the vehicle. The photographs and the Panchanama should be read as evidence in lieu of the vehicle and the R.C.book surrendered by the petitioner is directed to be handed over to the petitioner after substituting with the attested xerox copy of it."

6. The learned counsel for the petitioner would rely upon a judgment of this Court in the case of **Karthikeyan v. State** in **Crl.O.P.(MD) No.16951 of 2017**, wherein it is stated as follows:



"It is clear from the above judgments that permission for the return of the vehicle should be the general rule rather than the exception. This Court has gone to the extent of saying that the owner of the vehicle can even be permitted to sell the vehicle after causing of photographs of the vehicle and preparing the panchanama in the presence of the witnesses. The march of law has gone to that extent."

7.The learned counsel for the petitioner would rely upon a judgment of this Court in the case of **Jupiter Enterprises v. State** in **Cr1.O.P. (MD) Nos.26532 to 26535 of 2017**, wherein it is stated as follows:

"This proposition has been followed by various decisions of this Court also and one such decision is in the case of **Sundaram Finance Ltd., v. State of Tamil nadu** reported in (2011(1) MWN (Cr.) 437)."

8.It is seen that the offence against the petitioner is not with regard to the ownership of the vehicles. The vehicles were used for transporting passengers from Mumbai to Tamilnadu during pandemic period without any proper permit.

9.Considering the peculiar nature of the offence and considering that the vehicles are old ones and considering the facts and circumstances of the case, this petition is allowed and the petitioner is permitted to sell the vehicles on following conditions:

(i) Necessary photographs shall be taken and the same shall be authenticated and certified and a detailed panchanama shall be prepared before the release.

(ii) Attested xerox copies of the R.C. book is to be filed.

(iii) The photographs and panchanama shall be read as evidence in lieu of the marking of the vehicle.

10.This order cannot be treated as a precedent in other cases.

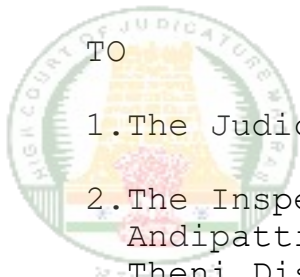
Sd/-

Assistant Registrar(CS-I)

// True Copy //

/06/2023

Sub Assistant Registrar(CS)



TO

- 1.The Judicial Magistrate, Aundipatti,Theni District
- 2.The Inspector of Police
Andipatti Police Station,
Theni District



WEB COPY
Copy to:-

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER DATED : 01/06/2023

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ORDER

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CRL MP(MD). No.7803 of 2022

in

Cr1.OP No.11466 of 2020

Giving direction and etc.

as stated within.

KB(13.06.2023) 4P 4C