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Crl.R.C(MD)No.761 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2024

Pronounced on : 17.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.761 of 2024

Kalaiselvan

... Petitioner

Vs.

1.The State rep. by
The Inspector of Police,
S.S.Kottai Police Station,
Sivaganagi District.
(Crime No.67 of 2024)

2.A.Prakash

... Respondents

*(R2 is impleaded as per order of the Court, dated
06.09.2024 in Crl.M.P(MD)No.9462 of 2024 in
Crl.R.C(MD)No.761 of 2024)*

PRAYER: This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for the records pertaining to the order in Cr.M.P.No. 1608 of 2024, dated 02.08.2024 passed by the District Munsif and Judicial Magistrate Court, Singampunari and set aside the same by allowing the Criminal Revision Petition.

For Petitioner : Mr.R.Balamurugan

For R1 : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)

For R2 : No Appearance



ORDER

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This Criminal Revision Case is directed against the order, dated 02.08.2024 passed in Crl.M.P.No.1608 of 2024 on the file of the learned District Munsif-cum-Judicial Magistrate Court, Singampunari and to set aside the same and to direct the learned Judicial Magistrate to release the Tipper lorry bearing registration No.TN-63-AJ-4489 to the revision petitioner on interim custody.

2.The brief facts of the case:

The Tipper Lorry bearing Registration number TN-63-AJ-4489 belonged to the petitioner and the defacto complainant Prakash entered into agreement with the petitioner for purchase of vehicle for Rs.13,65,000/- and paid Rs.3,00,000/- towards advance. Then, the defacto complainant paid Rs.5,00,000/- to the father-in-law of the petitioner on 01.04.2023 and thereafter, the petitioner demanded huge amount for transferring name in the RC Book and so the defacto complainant/2nd respondent Prakash lodged a complaint. A case was registered in Crime No.67 of 2024 U/s.406 and 420 of IPC by the first respondent police on 08.06.2024 against this petitioner and the lorry was seized. The petitioner filed the petition in Crl.M.P.No.1608 of 2024 before the District Munsif-cum-Judicial Magistrate Court, Singampunari



for interim custody of the vehicle and the said petition was dismissed on the ground that there was a rival claim over the property by two persons, which could be decided on trial.

3. Aggrieved by that order, the petitioner has come forward with this present Criminal Revision Case.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent.

5. The learned counsel appearing for the revision petitioner has submitted that the petitioner is the owner of the vehicle, who purchased on hire purchase and still has been paying EMI to the financier. In the meanwhile, the petitioner and the second respondent entered into sale agreement, dated 29.03.2023 for sale of tipper lorry and the second respondent took the lorry and met with an accident, for which a case in Crime No.67 of 2024 was registered, later the second respondent handed over the vehicle to the petitioner and asked for return of money paid by him. While the facts being so, the second respondent lodged a false complaint. In the meantime, on the basis of complaint lodged by the second respondent, the



first respondent registered the present case against the petitioner and seized the vehicle. Still, the R.C.Book is in the name of the petitioner and the name was not transferred to the second respondent. The seized vehicle is kept idle in open yard by the respondent police from the date of seizure. If the vehicle is kept in open place, due to exposure of sun and rain, the value of the vehicle would get deteriorated and therefore, interim custody of the vehicle may be granted to the petitioner. In support of his argument, the learned counsel relied on the citations reported in **2003 (1) CTC 175 (Sunderbhai Ambalal Desai /v/ State of Gujarat** and order passed by this Court in **Crl.R.C(MD)No.1223 of 2023, dated 13.02.2024.**

6. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the petitioner's vehicle was seized upon the case registered and investigation has been completed and the final report has also been filed by the first respondent police.

7. The alleged intending purchaser/defacto complainant has been impleaded as the second respondent and his name was also printed in the cause list. The second respondent neither appeared in person or through counsel nor filed any counter.



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8. On hearing both sides and perusal of records, it is clear that the petitioner is the owner of the vehicle in question and the said vehicle was seized by the respondent police in this case registered U/s.406 and 420 of IPC. A charge sheet was also laid after investigation. Admittedly, the vehicle is remanded in R.P.R.No.72/2024 before the District Munsif-cum-Judicial Magistrate Court, Singampunari. In the interest of justice, though the 2nd respondent/alleged sale agreement holder was impleaded and his name was also printed in the cause list, he did not appear in person or through counsel and did not file any counter. The vehicle was seized and the same is kept in open place which was not disputed by the respondent police. The petitioner claims to be the owner of the vehicle and the R.C.Book is still in his name, which is also seen from the available records. Insurance Certificate and permit are also stand in the name of the petitioner. A charge sheet is also laid in this case. If the vehicle is kept in open place exposing to sun and rain, the value of the vehicle will be deteriorated and no purpose will be served in keeping the vehicle in custody. The Hon'ble Supreme Court issued guidelines in the **Sunderbhai Ambalal Desai case** reported in **2003 (1) CTC 175** in respect of return of seized properties. Considering the overall facts and circumstances of the case, this Court is inclined to allow this revision subject to conditions.



9. Accordingly, this Criminal Revision Case is allowed, and the order, dated 02.08.2024 passed in Crl.M.P.No.1608 of 2024 on the file of the learned District Munsif-cum-Judicial Magistrate, Singampunari, is hereby set aside. The Tipper Lorry bearing registration No.TN-63-AJ 4489 is ordered to be returned to the petitioner on interim custody on the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with two sureties for the like sum to the satisfaction of the learned District Munsif-cum-Judicial Magistrate, Singampunari;

ii) The vehicle shall be photographed in different angle and the engine and chassis number shall also be photographed in the presence of the Head Clerk of the learned District Munsif-cum-Judicial Magistrate, Singampunari at the cost of the petitioner and the petitioner's signature to be obtained in the back side of the photographs and the said photographs and CD shall be kept in the case bundle for the purpose of marking them as material objects during trial;

(iii) The petitioner shall deposit the original Registration Certificate of the vehicle before the District Munsif-cum- Judicial Magistrate Court, Singampunari;



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(iv) The petitioner shall produce the vehicle before the District Munsif-cum- Judicial Magistrate Court, Singampunari monthly once i.e., on the first working day of every month and as and when required;

(v) The petitioner shall not dispose or alienate or change the physical features of the vehicle till the disposal of the case and the petitioner shall cooperate with the trial Court for disposal of the case.

17.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The District Munsif and Judicial Magistrate,
Singampunari.
- 2.The Inspector of Police,
S.S.Kottai Police Station,
Sivaganagi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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