



Crl.O.P.(MD)No.14306 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14306 of 2024

Gunasekaran

... Petitioner

Vs.

The Inspector of Police,
Tamil University Police Station,
Thanjavur District.
(Cr.No.199 of 2024)

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to direct the respondent to produce the vehicle Hero Passion Pro bearing Registration No.TN 49 BD 7497 to the learned Judicial Magistrate No.II, Thanjavur by complying the order made in Crl.M.P.No.2819 of 2024 dated 04.06.2024 on the file of the learned Judicial Magistrate No.II, Thanjavur in connection with Crime No.199 of 2024.

For Petitioner : Mr.K.Pragadeesh Kumar

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor



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ORDER

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This criminal original petition has been filed seeking orders to direct the respondent to produce the vehicle Hero Passion Pro bearing Registration No.TN 49 BD 7497 to the learned Judicial Magistrate No.II, Thanjavur by complying the order made in Crl.M.P.No.2819 of 2024 dated 04.06.2024 on the file of the learned Judicial Magistrate No.II, Thanjavur in connection with Crime No.199 of 2024.

2.It is evident from the records that the petitioner has filed a petition under Section 451 Cr.P.C., to grant interim custody of the property, namely, Hero Passion Pro bearing Reg.No.TN49BD7497, before the Court of Judicial Magistrate No.I, Thanjavur in Crl.M.P.No. 2819 of 2024 and the learned Magistrate considering the objection raised by the respondent Police has passed an order dated 04.06.2024 granting interim custody of the vehicle by imposing conditions. The learned Magistrate in the said order by observing that the property was not at all produced before the said Court, directed the respondent Police to produce the case property before the Court and on production of the said property, the petitioner has to execute own bond for a sum of Rs.80,000/-



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with two sureties of each of Rs.10,000/- to the satisfaction of the Court, that panchanama has to be prepared in Judicial Form No.82 of the Criminal Rules of Practice and also to produce photographs and CD of the property along with certificate under Section 65B of the Indian Evidence Act and that the petitioner has to give an undertaking affidavit that he will not alienate, encumber or change the physical features of the property till the disposal of the case.

3.In pursuance of directions of the learned Magistrate, the petitioner has filed surety memo along with sureties. But, the learned Magistrate has returned the memo vide order dated 20.06.2024 on the ground that the case property was not produced before the said Court. In view of returning of the memo by the learned Magistrate, the present petition came to be filed seeking direction to the respondent Police to produce the case property.

4.Chapter XXXIV(Sections 451 to 459) of the Code of Criminal Procedure deals with the provisions for the disposal of the seized property. Section 451 Cr.P.C., deals with the interim custody and disposal of the property till the criminal trial or enquiry, whereas,



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Section 457 Cr.P.C., envisages procedure to be followed by Police upon seizure of the property.

5.Sub Section (1) of 457 Cr.P.C., states that after seizure of any property under the Cr.P.C., if the said property is not produced during enquiry or trial in a criminal Court, then the learned Magistrate is empowered with discretionary power to issue orders that will ensure the disposal of such property or delivery of such property to the person entitled to its possession and in case, the identity of the person, entitled to the possession of the seized property is not known, then, the learned Magistrate may pass orders as he deems fit to ensure the proper custody and protection of such property.

6.Sub Section (2) of Section 457 Cr.P.C., states that if the identity of the person entitled to the possession of the seized property is known, then the learned Magistrate may at his discretion impose any conditions for delivery of such property to the entitled person and in case, the identity of the person entitled to the possession of such seized property is unknown, the learned Magistrate may order the seized property to be detained and issue proclamation specifying the articles making up such



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property.

7.It is settled law that the criminal Court has necessary jurisdiction under Section 457 Cr.P.C., to give custody of the seized articles at the stage of investigation, even when those seized properties are not produced before the Court. The Division Bench of Gauhati High Court, in the case of *State of Assam and Anr. Vs. Ram Sankar Maurya and others* reported in *2023 LiveLaw (Gau) 35*, has observed that at the investigation stage, the seized articles cannot be released by a Court under Section 451 Cr.P.C., however, under Section 457 Cr.P.C., the criminal Court has jurisdiction to give custody of the seized property/articles at the stage of investigation, when those seized property are not produced before the Court.

8.In the case on hand, the learned Magistrate even when the property was not produced before him, has rightly passed an order granting interim custody. But, when the petitioner has produced sureties in pursuance of directions of the learned Magistrate, the same came to be returned on the ground that the case property was not produced. Considering the legal position above referred, this Court has no



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hesitation to hold that the impugned order of return dated 20.06.2024 by the learned Magistrate cannot be sustained and the learned Magistrate has to verify the sureties and compliance of the conditions imposed by him and has to issue necessary directions to the respondent police to release of vehicle.

9.In the result, the order of returning the surety memo is hereby set aside and the learned Judicial Magistrate No.II, Thanjavur is directed to verify the sureties and compliance of other conditions imposed vide order in Crl.M.P.No.2819 of 2024 dated 04.06.2024. The learned Magistrate, if satisfied with the sureties and the compliance of the other conditions, is further directed to issue necessary directions to the respondent Police to release the vehicle. Accordingly, this criminal original petition is disposed of.

30.08.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Note: Issue order copy on 04.11.2024



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- 1.The Judicial Magistrate No.II,
Thanjavur.
- 2.The Inspector of Police,
Tamil University Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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