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Current Tamil Nadu Cases

2008 (6) CTC

2008 (6) CTC 846

**IN THE HIGH COURT OF MADRAS
(Madurai Bench)**

K.N. Basha, J.

CrI.R.C. (MD) No.897 of 2008

30.10.2008

Gajendran

.....*Petitioner*

Vs.

State through the Inspector of Police, Civil Supplies CID, Madurai

.....*Respondent*

Code of Criminal Procedure, 1973 (2 of 1974), Section 451 — Return of valuable articles — Power and functions of Magistrate — Production of vehicle before Court is not necessary — Guidelines are issued.

The Powers under Section 451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. Court or the Police would not be required to keep the article in safe custody;
3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

It is seen that the respondent Police has not produced the vehicle before the learned Magistrate but on the other hand sent intimation to the District Collector in respect of the seizure of the vehicle and also in respect of keeping the vehicle in his custody. This Court is of the considered view that in view of the above said admitted facts, the learned Magistrate ought not to have returned the Petition merely on the ground that the vehicle was not yet produced before the Court. The learned Magistrate ought to have ascertained the actual state of affairs from the respondent Police. This Court is constrained to state that the impugned docket order of the learned Magistrate is clearly in contravention of the guidelines and principles laid down by the Hon'ble Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, SLP (Crl.) No. 2755 of 2002 and *C.M. Mudaliar v. State of Gujarat* case, 2003 SCC (Cri) 1943 and thereafter clarified by the subsequent decision in respect of the very same case, namely, *Sunderbhai Ambalal Desai* 2003 SCC (Cri) 1440. [Para 9]

CASES REFERRED

C.M. Mudaliar v. State of Gujarat, 2003 SCC (Cri) 1943 —[Relied on].....3, 9
Sunderbhai Ambalal Desai v. State of Gujarat, SLP (Crl.) No. 2755 of 2002 —[Relied on].....
.....3, 4, 9, 10

Mr. K. Jeganathan, Advocate for Petitioner.

Mr. P. Rajendran Government Advocate (Crl. Side) for Respondent.

CrI. R.C. DISPOSED OF

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***Prayer :** Criminal Revision Petition filed under Section 397 of the Code of Criminal Procedure, praying to call for the records pertaining to the order passed by the learned Judicial Magistrate, Vadipatti, Madurai District in CrI.M.P. No. Unnumbered of 2008 dated 20.10.2008 and set aside the same and direct the respondent to return the vehicle Mini van bearing Registration No. TN-57-M-5109, which seized by the respondent Police in Crime No. 746 of 2008 on 14.08.2008 to the custody of the petitioner pending investigation.*

JUDGMENT

1. The learned counsel for the petitioner submits that the petitioner has come forward with this Petition, seeking for the relief of setting aside the order dated 20.10.2008 in CrI.M.P. No. Unnumbered of 2008 passed by the learned Judicial Magistrate, Vadipatti, Madurai District and direct the respondent to return of the vehicle Mini van bearing Registration No. TN 57-M-5109 said to have been seized by the respondent-Police.

2. It is seen that the petitioner has been implicated in this case as A-4 for the alleged offence under Sections 6(4) of T.N.S.C. (RDCS) Order, 1982 read with 7(1)(a)(ii) of the E.C. Act, on the allegation of transport of 60 bags of 50 kg each PDS rice. It is the further case of the prosecution that the vehicle owned by the petitioner, namely, Mini van bearing Registration No. TN-57-M-5109 has been seized by the respondent-Police on 14.08.2008 at about 8 a.m. at Vadipatti, Dindigul Road, after the respondent Police intercepted the said vehicle. It is seen that the vehicle was seized along with 60 bags of PDS rice. Thereafter, it is the version of the petitioner that the petitioner filed a Petition under Section 451 of Criminal Procedure Code before the learned Judicial Magistrate, Vadipatti, seeking for the relief of return of his vehicle, Mini van bearing Registration No. TN-57-M-5109 and the learned Magistrate returned the petition by making the docket order dated 20.10.2008 on the ground that the property not yet remanded in this case.

3. Mr. K. Jeganathan, the learned counsel appearing for the petitioner vehemently contended that the learned Magistrate ought not to have returned the petition and the impugned docket order to the effect that the Petition returned on the ground of property not yet remanded in this case is untenable in law and against the principles and guidelines stipulated by the Hon'ble Supreme Court. The learned counsel for the petitioner in support of his contention strongly placed reliance on the decision of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, SLP (CrI.) No.2755 of 2002 and *C.M. Mudaliar v. State of Gujarat*, 2003 SCC (Cri) 1943.

4. It is contended by the learned counsel for the petitioner that the Hon'ble Supreme Court further clarified in the subsequent decision in *Sunderbhai Ambalal Desai case*, 2003 SCC (Cri) 1440, in respect of the very same case clarified to the effect that there may not be any necessity for producing the vehicle before the Court for entertaining the Petition for return of the vehicle. Therefore, it is contended that the impugned order of

returning the Petition filed by the petitioner for return of the vehicle is liable to be set aside and the learned Magistrate may be directed to consider the Petition in accordance with law and as per the guidelines stipulated by the Hon'ble Supreme Court in the decision in *Sunderbhai Ambalal Desai case*, 2003 SCC (Cri) 1943, and further clarified in the subsequent decision in *Sunderbhai Ambalal Desai case*, 2003 SCC (Cri) 1440.

5. The learned Government Advocate on the other hand submitted that the petitioner has been implicated as one of the accused as A-4 in this case for the alleged transport of PDS rice bags in his vehicle, Mini van bearing Registration No. TN-57-M-5109. It is submitted that the said vehicle was intercepted by the respondent-Police on 14.08.2008 and the respondent Police seized the vehicle along with 60 bags of PDS rice. It is submitted that thereafter the respondent Police sent intimation to the District Collector in respect of the seizure of the vehicle of the petitioner. The learned Government Advocate would further submitted that as on date, the vehicle of the petitioner, namely, Mini van bearing Registration No. TN-57-M-5109 is in the custody of the respondent-Police.

6. I have carefully considered the rival contentions put forward by either side and also perused the materials available on record including the docket order passed by the learned Magistrate, returning the Petition filed by the petitioner for seeking the relief of return of his vehicle said to have been seized by the respondent-Police.

7. A perusal of the impugned docket order of the learned Magistrate reads hereunder :

“Retd.

Property not yet remanded in this case. Hence returned.

Signature
20.10.2008”

8. It is pertinent to be noted that the respondent-Police has not disputed about the seizure of the vehicle of the petitioner, namely, Mini van as stated above and as on date, admittedly the vehicle is in the custody of the respondent-Police.

9. It is seen that the respondent-Police has not produced the vehicle before the learned Magistrate but on the other hand sent intimation to the District Collector in respect of the seizure of the vehicle and also in respect of keeping the vehicle in his custody. This Court is of the considered view that in view of the above said admitted facts, the learned Magistrate ought not to have returned the Petition merely on the ground that the vehicle was not yet produced before the Court. The learned Magistrate ought to have ascertained the actual state of affairs from the respondent-Police. This Court is constrained to state that the impugned docket order of the learned

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Magistrate is clearly in contravention of the guidelines and principles laid down by the Hon'ble Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, SLP (Cri.) No. 2755 of 2002 and *C.M. Mudaliar v. State of Gujarat* case, 2003 SCC (Cri) 1943, and thereafter clarified by the subsequent decision in respect of the very same case, namely, *Sunderbhai Ambalal Desai*, 2003 SCC (Cri) 1440.

10. This Court is constrained to incorporate the relevant guidelines and principles laid down by the Hon'ble Apex Court in the decision cited Supra, namely, in *Sunderbhai Ambalal Desai case*, 2003 SCC (Cri) 1943. The Hon'ble Apex Court has held :

“The powers under Section 451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. Court or the Police would not be required to keep the article in safe custody;
3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. this jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

Basavva Kom Dyamangouda Patil v. State of Mysore, 1977 (4) SCC 358 : 1977 SCC (Cri) 598, relied on.

Valuable articles and currency notes

Valuable articles such as golden or silver ornaments or articles studded with precious stones, need not be kept in Police custody for years till trial is over. The Magistrate should pass appropriate orders as contemplated under Section 451, Cr.P.C. at the earliest. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

- (1) preparing detailed proper panchnama of such articles;
- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- (3) after taking proper security.

For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451, Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant,

accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451, Cr.P.C. to impose any other appropriate condition.

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in Police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstances the Investigating Officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed.

Vehicles

It is of no use to keep such seized vehicles at the Police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

In case where the vehicle is not claimed by the accused, owner, or the Insurance company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the Insurance Company then the Insurance Company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If the Insurance Company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

Liquor/Narcotic drugs

For articles such as seized liquor also, prompt action should be taken in disposing of them after preparing necessary panchnama. If sample is required to be taken, the sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, a large quantity of liquor should be stored at the Police station. No purpose is served by such storing.

Similarly for the narcotic drugs also, for its identification, procedure under Section 451, Cr.P.C. should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the

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Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

However these powers are to be exercised by the Magistrate concerned. The Magistrate concerned would take immediate action for seeing that powers under Section 451, Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the Police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly”.

The Hon’ble Apex Court in the subsequent decision in respect of the very same case, namely, in *Sunderbhai Ambalal Desai case*, 2003 SCC (Cri) 1440, further clarified that :

“Further, with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the Court and the seizure report may be sufficient”.

Therefore, in the decision cited Supra, the Hon’ble Apex Court has laid down certain guidelines in respect of return of properties, namely, valuable articles, currency notes and vehicles. It is emphasised by the Hon’ble Apex Court that the powers under Section 451, Cr.P.C. should be exercised expeditiously and judiciously.

11. It is pertinent to be noted that the Hon’ble Apex Court has further held in the decision cited Supra that the production of the vehicle seized before the Court is not a condition precedent for entertaining the Petition for return of the vehicle filed under Section 451 of Cr.P.C. As far as the instant case is concerned, it is not disputed by the respondent Police about the seizure of the vehicle, namely, Mini van bearing Registration No. TN-57-M-5109 which belongs to the petitioner. The undisputed fact remains further that admittedly the said vehicle is now with the custody of the respondent Police and added to that admittedly the said vehicle was seized for the case registered against the petitioner and others for the alleged offence under Sections 6(4) of T.N.S.C. (RDCS) Order, 1982 read with 7(1)(a)(ii) of the E.C. Act.

12. It is pertinent to be noted that the vehicle of the petitioner was seized as early as on 14.08.2008 and the vehicle was kept idle in the custody of the respondent-Police and also exposed to sun and rain and further there is also reasonable apprehension of missing important parts of the vehicle and as a result, it is no doubt that the condition of the vehicle would be deteriorated day-by-day and in such event, the petitioner would be put in to great hardship and irreparable loss. Therefore, this Court is constrained to set aside the impugned docket order of the learned Judicial Magistrate, Vadipatti, Madurai District, dated 20.10.2008, returning the Petition filed under Section 451 of Cr.P.C. for the return of the vehicle of the petitioner,

namely, Mini van and consequently direct the learned Magistrate to consider the Petition filed by the petitioner for return of the vehicle, namely, Mini van bearing Registration No. TN-57-M-5109 seized on 14.08.2008 by the respondent Police and to pass orders on merits and in accordance with law by following the principles and guidelines stipulated by the Hon'ble Apex Court in the decisions cited supra by imposing suitable conditions as indicated by the Hon'ble Apex Court and to dispose of the petitions as expeditiously as possible and more particularly within a period of ten days from the date of receipt of the copy of the order of this Court.

13. Before parting with this matter, this Court is constrained to state that the learned Magistrates are frequently returning the Petition filed under Section 451 of Cr.P.C. on the ground of the vehicle not produced before the Court, ignoring the admitted fact of seizure of the vehicle by the concerned respondent-Police. It is also seen that in number of matters, the guidelines stipulated by the Hon'ble Apex Court in the decisions cited Supra, have not been taken note by the learned Magistrates concerned. In view of such state of affairs, the affected and aggrieved persons have been put into great hardship and irreparable loss in a case of theft of gold jewellery or valuable articles and cash and the victims, viz., the complainants, having already suffered mental torture and agony, have also put into great hardship and irreparable loss on the ground of delay and rejection of the Petition filed under Section 451 Cr.P.C. for return of their articles and cash in spite of the admitted fact that they are the owners of the properties and such properties including cash were stolen from their premises or from them and in spite of the arrest of the accused and recovery of the articles and in spite of the fact that there is no counter claim, they are not able to get return of the articles and properties. It is also pertinent to be noted that in respect of the vehicles seized in several cases, the vehicles have been kept in the Police custody at the Police Station exposing to the sun and rain and also missing of important and valuable parts of the vehicle ultimately, resulting in grave miscarriage of justice to the owners of the vehicles. Therefore, this Court is constrained to state that the learned Magistrates, while dealing with the petition filed under Section 451, of Cr.P.C. for return of properties, namely, valuable articles, currency notes and the vehicle, should give effect to the principles and guidelines stipulated by the Hon'ble Apex Court in the decisions cited Supra in its letter and spirit and the learned Magistrates should strictly follow the principles and guidelines laid down by the Hon'ble Apex Court in the matters of return of properties.

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