

Paramasivam Vs. the State

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Court : Chennai

Decided On : Feb-16-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure(CrPC) - Section 351, 457, 397, 401

Appeal No. : CRL.R.C(MD)No.58 of 2012

Appellant : Paramasivam

Respondent : The State

Advocate for Def. : Mrs.S.Prabha, Adv.

Advocate for Pet/Ap. : Ms.B.Rajesh Saravanan, Adv.

Judgement :

Prayer

Criminal Revision case filed under Section 397 r/w Section 401 of Criminal Procedure Code, to call for the records to the order dated 20.01.2012 in Cr.M.P.No.514 of 2012, passed by the learned Judicial Magistrate No.II, Kovilpatti in Crime No.375 of 2011, of the respondent/Police and to set aside the same.

ORDER

1. The person claiming to be the owner of the vehicle, namely, Hero Honda Motor Cycle bearing Registration No.TN 67 R 1657, Engine No. 02J 25E 10990, Chasis No.02L 26F 03371, which was produced as a case property before the learned Judicial Magistrate No.II, Kovilpatti in Crime No.375 of 2011, on the file of Kayathar Police Station is the petitioner in the present revision case.

2. The above said case in Crime No.375 of 2011 was registered based on the complaint given by one Pondi, the brother of the revision petitioner that somebody caused mischief by setting fire to the above said vehicle and also 3 other vehicles. Admittedly vehicles were seized by the police and were produced before the above said Magistrate, who remanded the same as case properties in the said case. Thereafter, the petitioner filed a petition in Cr.M.P.No.514 of 2012, before the learned Judicial Magistrate No.II, Kovilpatti under Section 351 Cr.P.C. for the return of the said vehicle. The learned Judicial Magistrate chose to dismiss the said petition by the impugned order dated 20.01.2012, stating that if the vehicle was returned to the petitioner, he would get it repaired and the evidence of mischief would disappear. Assailing the said reason as totally unsustainable and contending that the learned Judicial Magistrate failed to follow the mandatory directions issued by the Honourable Supreme Court in *Sunderbhai Ambalal Desai .vs. State of Gujarat* reported in 2003(1) CTC 175, the petitioner has come forward with the present Criminal Revision Case.

3. The submissions made by Mr.B.Rajesh Saravanan, learned counsel for the revision petitioner in the revision case and Mrs.S.Prabha, learned Government Advocate(Crl.Side) representing the respondent/Police were heard.

4. During the course of hearing, it was admitted that to show the damage caused to the vehicle, photographs were taken. When such is the case, the assumption of the learned Judicial Magistrate that the valuable articles which are produced as case properties should be kept intact till the completion of the trial is absolutely on an erroneous footing. In this regard, the scope of Section 451 and 457 Cr.P.C., has been considered and elucidated in a catena of decisions not only by the various High Courts including this High Court, but also by the Honourable Supreme Court. It is unnecessary to cite all those decisions. Suffice to refer to the

directions issued by the Honourable Supreme Court in *Sunderbhai Ambalal Desai .vs. State of Gujarat* reported in 2003(1) CTC 175, wherein, specific directions regarding vehicles have been issued and the following are such directions issued by the Honourable Supreme Court: 15. Learned senior counsel Mr.Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handling over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, 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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by 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 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 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 panchanama should be prepared.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate 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 concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

5. For giving such a direction, their Lordships of the Honourable Supreme Court have also given the reasons for issuing such directions in the following words:

7. In our view, 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 articles in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, than 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 change of tampering with the articles.

6. The Honourable Supreme Court also has mentioned about the necessary supervision by the Registry of the concerned High Court in seeing that the rules in this regard are implemented properly.

7. A reading of the impugned order passed by the learned Judicial Magistrate exhibits either ignorance of or disregard for the above said directions issued by the Honourable Supreme Court. The property, the interim custody of which has been sought for is admittedly that of the petitioner. The petitioner has also produced the

copies of the RC Book to prove that he is the owner of the vehicle. Merely because the vehicle was involved in an accident or a case of arson in which some damage has been caused to the vehicle, the vehicle should not be allowed to lie in disuse till the completion of the trial in the case . That is the reason why the provisions in Section 451 and 457 have been made and the Honourable Supreme Court has also directed expeditious disposal of the claims for interim custody of the vehicles. The Honourable Supreme Court has gone further to state that even in case, wherein no one comes forward claiming the return of property under the above said provisions, the Magistrate concerned should issue notice to the insurer, if any, and can handover the vehicle to the insurer on the application of the insurer. In case, the vehicle is not found to be covered by a policy of insurance and no one comes forward to claim it, provision has also been made not only in the above said provisions, but also in the directions issued by the Honourable Supreme Court referred to above, for the disposal of the property after getting necessary Muchalikas or Panchanamas prepared and photographs of the properties taken and kept in the file so as to avoid any further damage being caused to the vehicle making it useless due to passage of time. Similarly, in case of currency notes also, the direction has been given for deposit of the amount or for return of the same to the person entitled to it. It goes without saying that the properties are directed to be returned to the person entitled to hold them and not for keeping idle and thereby making the property becoming useless. The said provisions have been made for the purpose of enabling the person entitled to have the property, especially, the vehicle to put it in use, if necessary, by effecting repairs.

8. This Court does not find any justification in the order of learned Judicial Magistrate No.II, Kovilpatti refusing to hand over the vehicle to the petitioner. The order of the learned Judicial Magistrate is patently erroneous and the same deserves to be set aside.

9. In the result, the criminal revision case is allowed and the order of the learned Judicial Magistrate No.II, Kovilpatti made in Cr.M.P.No.514 of 2012, dated 20.01.2012 is set aside. Cr.M.P.No.514 of 2012 filed before the learned Judicial Magistrate No.II, Kovilpatti stands allowed and the vehicle, namely Hero Honda

Motor Cycle bearing Registration No.TN 67 R 1657, Engine No. 02J 25E 10990, Chasis No.02L 26F 03371 is directed to be handed over to the revision petitioner with the following conditions:-

i)The petitioner shall produce proof of ownership of the vehicle.

ii)The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) for the vehicle, namely Hero Honda Motor Cycle bearing Registration No.TN 67 R 1657, Engine No. 02J 25E 10990, Chasis No.02L 26F 03371 with two sureties to the satisfaction of the Judicial Magistrate No.II, Kovilpatti

iii)The petitioner shall surrender the R.C.Book and the learned Judicial Magistrate No.II, Kovilpatti, is at liberty to return the R.C.Book for renewal of the registration or for insuring the vehicle. The RC can be obtained from the court by filing a petition and after the accomplishment of the purpose, the same should be returned to the court.

iv)The petitioner shall also file an affidavit of undertaking to the effect that:

a) he will not alienate the vehicle without obtaining an order from the learned Judicial Magistrate No.II, Kovilpatti.

b) he will produce the said vehicle before the Court as and when summoned to produce the same and

c) no major alteration excepting the necessary repairs to make the vehicle road worthy shall be made.

v)The investigating agency can collect the records relating to the expenses incurred for effecting such repairs to be used during the trial of the case.

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