

**Murugan Vs. State Re. by**

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**SooperKanoon Citation :** [sooperkanoon.com/964946](http://sooperkanoon.com/964946)

**Court :** Chennai

**Decided On :** Jan-11-2013

**Judge :** The Honourable Mr.Justice M.Venugopal

**Appellant :** Murugan

**Respondent :** State Re. by

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

11. 01/2013 CORAM THE HONOURABLE Mr.JUSTICE M.VENUGOPAL Criminal Revision Case (MD) No.17 of 2013 Murugan ... Petitioner Vs State Re. By The Inspector of Police, Thoothukudi North Police Station, Thoothukudi, Thoothukudi District Crime No.17 of 2012 ... Respondent Prayer Criminal Revision Petition filed under Sections 397 read with 401 of Cr.P.C. to call for the records in Cr.M.P.No.4753 of 2010 on the file of the Learned Judicial Magistrate No.2, Thoothukudi and set aside the order dated 30.08.2012 and return the vehicle viz., TATA INDICA car bearing registration not TN 5.AC 149.to the petitioner. !For Petitioner... Mr.A.Thiruvadikumar ^For Respondent... Mr.P.Kandasamy, G.A.(Crl. Side) :ORDER The Petitioner/owner of the vehicle has preferred the instant Criminal Revision Petition as against the order dated 30.08.2012 in Cr.M.P.No.4753 of 2010 passed by the Learned Judicial Magistrate No.2, Tuticorin. 2.The Learned Judicial Magistrate No.2, Tuticorin, while passing the order dated 30.08.2012 in Cr.M.P.No.4753 of 2010 has inter alia observed that the Petitioner/owner of the vehicle has prayed for the return of the vehicle to him with

a view to receive the insurance amount and further in case, the vehicle/car is to be handed over to the Petitioner, then there is a possibility of non production of the same when the Court requires it for production of the same and further, the Petitioner has not produced the original Registration book of the vehicle etc., and resultantly, dismissed the petition. 3.The Learned counsel for the Petitioner/owner of the vehicle submits that the Petitioner is the registered owner of the Tata Indica car bearing Registration not TN 5.AC 149.and that the Petitioner filed Cr.M.P.No.4753 of 2010 praying for issuance of an order by the trial Court to handover the car in question. However, the trial Court has dismissed the said miscellaneous petition assigning reasons which are not correct in the eye of Law. Therefore, the Learned counsel for the Petitioner/owner of the vehicle prays for allowing the Criminal Revision filed by him as against the order dated 30.08.2012 in Cr.M.P.No.4753 of 2010 passed by the trial Court to promote substantial cause of justice. 4.This Court has heard the Learned Government Advocate (criminal side) appearing for the Respondent/Police. 5.In the affidavit in Cr.M.P.No.4753 of 2010, the Petitioner/owner of the vehicle has among other things averred that his friend Martyn on 11.01.2012 has taken the Tata Indica vehicle bearing Registration not TN 5.AC 149.for taking part in the funeral rights of one Pasupathi Pandian at Alangarathattu village in Tuticorin District and at that time, the said car has been set fire to by the anti-social elements and in that process, the entire vehicle has been burnt. Also, the Village Administrative Officer has given a complaint before the North Police Station. On that basis, the Respondent Police has registered a case under Sections 147 and 148 of I.P.C. and Section 4 of T.N.P.P.D.L. Act. Ultimately, the Petitioner has prayed for return of the vehicle in question to him for the purpose of carrying out repairs, inasmuch as, he has handed over the said vehicle. 6.Admittedly, the Petitioner/owner of the vehicle has filed miscellaneous petition, praying for the return of car in question to him under Section 451 read with 457 of Cr.P.C. Also, it is represented before this Court that the car has not been produced by the Police before the Court and the same is lying in the police station. 7.It is to be noted that Section 451 of Cr.P.C. will come into operative play as regards the custody and disposal of property pending trial in certain cases. For disposal of property under Section 451 of Cr.P.C., it is essential that the car in question ought to be under the control of the Magistrate. No wonder,

the orders passed by a Court of Law both under Section 451 and 457 of Cr.P.C., are during the pendency of trial or enquiry. The proceedings of investigation are not within the ambit of either enquiry or trial. As such, the Court is not competent to pass orders under these sections at this stage of investigation. 8. The power under Section 451 of Cr.P.C., must be exercised by a Court of Law in a quick and expeditious manner bearing in mind (i) the owner of the vehicle should not suffer because of remaining unused or by its misappropriation. (ii) The Court or police would not be required to keep the articles in safe custody. And (3) If proper panchnama before handing over possession of the vehicle is prepared, that can be used in evidence instead of its production before the Court during the trial. If need be, evidence should also be recorded, mentioning nature of the property in detail as per decision of Hon'ble Supreme Court in Ashok Kumar V. State of Bihar reported in AIR 200.SCW 2314.9. It is to be noted that the trial Court can take photograph of the vehicle in issue and also take bond from the Revision Petitioner that the vehicle/car would be produced if required at the time of trial. In this regard, the trial Court is empowered to take proper security. The bond and security should be taken with a view to prevent evidence being destroyed, altered or lost. Furthermore, the photograph of the order can be attested or countersigned by the Complainant or the vehicle owner or the custody as well as by the person to whom the custody is handed over. Apart from these conditions, it is open to the trial Court to impose any other condition as it deems fit and proper based on the facts and circumstances of the case. 10. As far as the present case is concerned, this Court is of the view that the trial Court obviously has not borne in mind the observation of the Hon'ble Supreme Court in Sunderbhai Ambala Desai V. State of Gujarat reported in AIR 200.SC 63. in regard to the appropriate order being passed as regards the return of the articles/properties concerned. 11. On going through the order of dismissal passed by the trial Court in Cr.M.P.No.4753 of 2012 dated 30.08.2012, this Court is of the considered view that the reason assigned by the trial Court that if the case property viz., car is returned, then there might arise an occasion that the vehicle would not be produced as and when the Court requires the same and also that only for the purpose of obtaining the insurance amount, the return of property is sought for. Further, the Petitioner has not produced the Registration book of the order etc. These reasons, in the considered opinion of this

Court, are not tenable, because of the fact that this Court comes to conclusion that on the facts and circumstances of the case, there is no impediment for the trial Court to return the Tata Indica car in question in the interest of justice. 12. Although, it is represented before this Court that the car in question viz., Tata India is under hypothecation agreement and the company has advanced a sizable loan to the Petitioner/owner of the vehicle, yet in Law, the Petitioner/registered owner of the vehicle has a precedence over the Financier in regard to the interim custody of the vehicle as per the ingredients of Section 451 of Cr.P.C., as opined by this Court. 13. Be that as it may, in view of the fact that the order of disposal passed by the trial Court in Cr.M.P.No.4753 of 2010 dated 30.08.2012 suffers from material irregularity and patent illegality, this Court in the interest of justice, interferes with the said order and sets aside the same in the interest of justice. Consequently, the Criminal Revision Petition succeeds. 14. In the result, the Criminal Revision Petition is allowed. The order passed by the trial Court in Cr.M.P.No.4753 of 2010 is hereby set aside by this Court for the reasons assigned by this Court in the Revision. The trial Court is directed to restore Cr.M.P.No.4753 of 2010 on its file and to return the Tata Indica car bearing Registration not TN 5.AC 149. to the Petitioner/owner of the vehicle after keeping view of the principles laid down by the Hon'ble Supreme Court in Sunderbhai Ambala Desai V. State of Gujarat reported in AIR 200.SC 63. and further is directed to hand over said order to the Petitioner by preparing a detailed proper panchanama of the car, by taking photograph of the vehicle and also a bond that the car would be produced, if required at the time of trial and also for taking proper and adequate security, as it deems fit and proper based on the facts and circumstances encircling the case in issue, after restoration of Cr.M.P.No.4753 of 2010. If necessary, the evidence may be taken in regard to the photographs etc. In any event, the trial Court is directed to dispose of Cr.M.P.No.4753 of 2010, after restoration within a period of 2 weeks from the date of receipt of a copy of this order, of course, after providing due opportunities to other side. Arul To 1. The Judicial Magistrate No.2, Tuticorin. 2. The Inspector of Police, Thoothukudi North Police Station, Thoothukudi, Thoothukudi District. 3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.