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(2012) 12 MAD CK 0087

Madras High Court (Madurai Bench)

Case No: Criminal R.C. (MD) No. 636 of 2012

M. Karuppasamy APPELLANT

Vs

Sub Inspector of Police RESPONDENT

Date of Decision: Dec. 19, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 451, 457
- Penal Code, 1860 (IPC) - Section 379

Citation: (2013) 2 MLJ(Cri) 23

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: P. Senthurpandian, for the Appellant; P. Kandasamy, Government Advocate (Criminal Side), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.
The Petitioner/A3 has filed the present Criminal Revision Petition as against the order dated 1.10.2012 in Cr. M.P. No. 6329 of 2012 passed by the Learned Judicial Magistrate, Ambasamudram. The Learned Judicial Magistrate, Ambasamudram, while passing the orders in Cr. M.P. No. 6329 of 2012 on 1.10.2012 has inter alia observed that "the petitioner is an Accused in the case and he has produced an original Registration Certificate to show that he is the owner of the vehicle viz., the Tractor bearing Registration No. TN 76 B 3083 and on perusal of the same, it comes to be known that he has purchased the said vehicle after the date of occurrence. Further, another person one E. Murugan has also made rival claim in respect of the vehicle by producing some receipts. The Petitioner/A3 has produced a xerox document stating that the vehicle has been given to him by E. Murugan, but, no document has been filed and ultimately held that the ownership of the vehicle will come to light at the time of trial/enquiry of the case and dismissed the petition.

2. According to the Learned counsel for the Petitioner/A3, the petitioner is the owner of the Tractor bearing Registration No. TN 76 B 3083 and in Crime No. 181 of 2012 on the file of the Respondent Police, a criminal case has been registered for the offence under Sections 379 of I.P.C. in regard to the theft of sand and in connection with the criminal case, the said vehicle was seized and remanded in P.R. No. 230 of 2012 before the Learned Judicial Magistrate, Ambasamudram.

3. The Learned counsel for the Petitioner/A3 urges before this Court that the Petitioner projected Cr. M.P. No. 6329 of 2012 before the Learned Judicial Magistrate, Ambasamudram, seeking interim custody of the Tractor in issue. The Petitioner/A3 staked a claim that he is the owner of the vehicle, having purchased from Murugan (erstwhile owner of the vehicle).

4. The grievance of the Petitioner/A3 is that the trial Court taken into irrelevant and immaterial factors, thereby ignoring the material and relevant factors into consideration, which resulted in dismissal of the miscellaneous petition. Also, an argument is projected on the side of the petitioner that if the Tractor is exposed to the hostile climate, then it will be un-road-worthy and will be of no utility value either to the prosecution or to the Accused.

5. Another limb of argument advanced on behalf of the petitioner is that on the side of the Respondent/Police, no objection has been raised for the Court to return the Tractor in question to the Petitioner/A3. It is represented on behalf of the Petitioner/A3 that the said E. Murugan, the erstwhile owner of the Tractor has raised an objection on 29.6.2012 before the trial Court in writing by filing a petition for not returning the property in question to the Petitioner/A3.

6. It is not in dispute that the Petitioner/A3 is the named Accused in the main case and according to him, he is the owner of the vehicle. It transpires that the Mahindra and Mahindra Financial Service Limited with whom the vehicle was earlier hypothecated under the hire purchase agreement has issued a cash receipt dated 11.4.2007 for a sum of Rs. 45,750/- towards on account of Mr. E. Murugan in respect of the said Tractor. Also, the Petitioner has reportedly issued a xerox copy of letter dated 14.5.2007 addressed to Mahindra and Mahindra Financial Services Limited, Tirunelveli inter alia stating that he has purchased the Tractor bearing Registration No. TN 76 B 3083 from E. Murugan and from 14.5.2007 he will be paying the rest of the instalments amounts without default. It appears also that on 14.5.2007 the said E. Murugan has given a letter to the said Financier inter alia stating that he has sold the vehicle to the revision petitioner/A3 on 14.5.2007 and further assured that future instalments amounts would be repaid by the Petitioner/A3.

7. At this stage, the Learned counsel for the Petitioner/A3 brings it to the notice of this Court that in the petitioner''s name, the Tractor has been changed/transferred as per the Assistant Registering Authority, Tenkasi and Ambasamudram on 23.8.2012. Therefore, in

view of the documents in his favour, the trial Court has ignored the same for consideration and has come to an erroneous conclusion in dismissing Cr. M.P. No. 6329 of 2012, which needs to be set aside by this Court sitting in Re-visional jurisdiction.

8. It is to be borne in mind that a Court of Law is supposed to pass orders not only u/s 451 of Cr.P.C. and also as per Section 457 of Cr.P.C. during the pendency of the trial of a criminal case or enquiry. Ordinarily, the owner of the vehicle in question is entitled to get back the vehicle after completion of the trial in the same condition when it has been seized/recovered. The powers conferred to the Learned Judicial Magistrate as per Section 451 of Cr.P.C. are summary in nature and it is to be taken note of that the Learned Judicial Magistrate, while dealing with a petition/application u/s 451 of Cr.P.C., in fact, it is not decided the rights of parties in respect of a property. Per contra, it only decides about the custody of such property. To put it succinctly, it may not even decide the title of the property at the time of interim custody of the vehicle. If a person is a registered owner of a Tractor/vehicle, then he is the proper person to have custody of the same as against the person, which whom he has a hire purchase agreement.

9. Now, in the present case, the Registration Certificate stands in the name of the Petitioner/A3. It is also evident that the Petitioner/A3 has given a letter dated 14.5.2007 to Mahindra and Mahindra Financial Services Limited, stating that he has purchased the Tractor in question. Also that E. Murugan has issued a letter dated 14.5.2007 to the aforesaid Financial Service, wherein, he has tacitly stated that he has sold the vehicle to the revision petitioner and also assured that the future instalments will be paid by the revision petitioner. Prima facie, the petitioner appears to have the balance of convenience in his favour in regard to the return of the Tractor to him as an interim custody. The interim custody of the Tractor bearing Registration No. TN 76 B 3083 in a given case ordinarily ought to be given to the registered owner or in whose name the Registration Certificate stands or permit stands and not to a person merely asserting title even on the basis of a purported sale deed. Furthermore, the Tractor in question should be released in favour of the person in whose name the registration of the same stands. It cannot be disputed that no Tractor/vehicle can be released in favour of its driver. Only the owner of the Tractor/vehicle or a new purchaser of the same is entitled to file an application/petition before the competent Court praying for an interim custody of the vehicle in issue.

10. On a overall assessment of the facts and circumstances of the case in an integral fashion and also taking note of the fact that the revision petitioner is arrayed as A3 in the case and also bearing in mind another important fact that he has produced the letter dated 14.5.2007 and also a letter dated 14.5.2007 written by E. Murugan (erstwhile owner) to Mahindra and Mahindra Financial Services Limited and also other xerox copies of documents like insurance also for Tractor in issue are the name of the revision petitioner etc., this Court comes to an inescapable conclusion that prima facie the revision petitioner/A3 appears to be the owner of the Tractor in issue. Therefore, this Court holds that the trial Court is not correct in dismissing Cr. M.P. No. 6329 of 2012 inter alia observing that it can be found out only during the time of trial as to who is the real owner

of the Tractor etc. Viewed in that perspective, this Court is performed to interfere with the said order passed by the trial Court in Cr. M.P. No. 6239 of 2012 dated 1.10.2012 inasmuch as the same is not sustainable in the eye of Law and accordingly sets aside the same in furtherance of substantial cause of justice, resultantly, the Criminal Revision succeeds. In the result, the Criminal Revision Petition is allowed and the order dated 1.10.2012 in Cr. M.P. No. 6329 of 2012 passed by the Learned Judicial Magistrate, Ambasamudram is set aside for the reasons assigned by this Court in this Revision. The Learned Judicial Magistrate is directed to restore Cr. M.P. No. 6329 of 2012 to her file and after providing due opportunities to other side, is directed to dispose of the said petition from the observations of the Hon"ble Supreme Court in the decision in Sunderbai Ambalal Desai v. State of Gujarath 2003 (1) CTC 175, and in any event, to dispose of the matter within a period of three weeks from the date of receipt of a copy of this order. It is open to the Learned Judicial Magistrate to prepare a detail proper panchanama of the Tractor in issue and also to take photograph of the same and also to obtain a bond from the Petitioner/A3 that it would be produced at the time of trial or whenever required during the pendency of the case as the case may be and also to take proper security. After all, the aim of obtaining bond and security is to prevent the evidence being destroyed, altered or lost etc. Even the photograph of the Tractor in issue can be attested or countersigned by the Petitioner/A3 and the Complainant/state in the interest of justice. Besides these conditions, also the trial Court is at liberty to impose any other suitable and reasonable condition as it deems fit and proper based on the facts and circumstances of the case.