

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.05.2008

CORAM:

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Cr1.R.C.No.727 of 2008

M.R.Shanmugam @ Thenkovan

... Petitioner

Vs.

State, rep. By the Inspector of Police,
Tiruvarur Town P.S.,
Tiruvarur District.
(Crime No.173 of 2008)

... Respondent

Prayer: Revision filed under Section 397 r/w 101 Cr.P.C. against the order made in Cr.M.P.No.1168 of 2008 dated 08.05.2008 on the file of Judicial Magistrate, Tiruvarur in Crime No.173 of 2008 on the file of the respondent for return of Scorpio Car bearing registration No.TN50E 3128 and two Nokia Cell Phones.

For Petitioner : Mr.D.Veerasekaran

For Respondent : Mr.N.Kumanan, Govt. Advocate

Heard both sides.

2.The petitioner has filed this Criminal Revision aggrieved against the order passed by the learned Judicial Magistrate, Tiruvarur in Cr.M.P.No.1168 of 2008 dated 08.05.2008 in Crime No.173 of 2008 on the file of the respondent police.

3.The learned Judicial Magistrate, Tiruvarur in his order passed in Cr.M.P.No.1168 of 2008 dated 08.05.2008 on the petition filed by the petitioner herein for return of the Case Properties viz., four wheeler viz., Scorpio and two Nokia Cellphones, has inter alia opined that if the vehicle is returned 'it may be again used for committing serious offences and that merely because the vehicle is kept in open place that alone cannot be a ground for returning the vehicle'. According to the learned Judicial Magistrate, Tiruvarur, the offences alleged against the accused are serious in nature and hence, he dismissed the petition on considering the nature of the case and the

stage of the investigation.

4.The learned counsel for the revision petitioner contends that the order passed by the learned Judicial Magistrate, Tiruvarur is not correct in law as well as on the facts of the case and that the lower Court has erred to see that the value of the car is more than Rs.10 lakhs and if the car is parked in the open space, the same will be exposed to sunlight and rain and all the parts will get rusted.

5.It is to be borne in mind that if the vehicle seized remains uncared for, then there is likelihood of it becoming junk day by day in the considered opinion of this Court.

6.On going through the order passed by the lower Court, this Court is of the considered view that the reason ascribed to the effect that if the vehicle is returned it may be again used for committing serious offences, is not correct in the eye of law and this Court opines that one cannot indulge in surmises or conjectures, assumptions or presumptions.

7.The Hon'ble Supreme Court in the decision Sunderbhai Ambalal Desai V. State of Gujarat 2003 (1) CTC 175 has inter alia observed that 'in regard to the Return of vehicles under Section 451 Cr.P.C., the vehicles seized by the police should not be kept at police station for a long period and that the Magistrate should pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of such vehicles if required and it is further observed that the vehicles could be returned in such manner even during pendency of application for return of such vehicles etc.' In the aforesaid decision it is laid down that a Court of law is to pass necessary order in regard to the property pending trial and the power is wide, which is to be exercised judicially and expeditiously. Moreover, the exercise of powers under Section 451 Cr.P.C. by the Magistrate must be used promptly and properly. It is pertinent to point out that appropriate bond and the guarantee for the return of said vehicle may also be taken if required by the Court at any point of time.

8.Therefore, this Court is of the considered view that the order passed by the learned Judicial Magistrate, Tiruvarur is not correct in law and the same is set aside to prevent aberration of justice and in furtherance of substantial cause of justice. Resultantly, the Criminal Revision Petition is allowed.

9.The learned Judicial Magistrate, Tiruvarur is directed to restore the Cr.M.P.No.1168 of 2008 on its file soon after the receipt of the copy of this order and pass appropriate orders in a weeks time in regard to the return of properties viz., Scorpio Car and two Nokia

Cellphones in accordance with the principles laid down by the Hon'ble Apex Court in true letter and spirit and in the manner known to law.

Sd/
Asst.Registrar

/true copy/

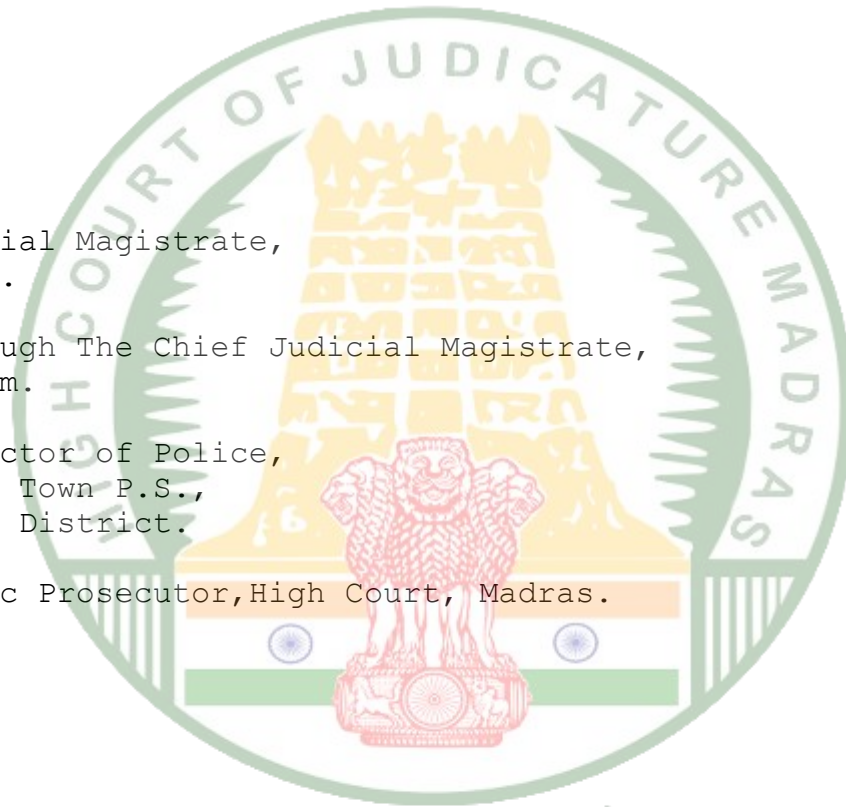
Sub Asst.Registrar

sgl

To

- 1.The Judicial Magistrate,
Tiruvarur.
- 2.-do- Through The Chief Judicial Magistrate,
Nagapattinam.
- 3.The Inspector of Police,
Tiruvarur Town P.S.,
Tiruvarur District.
- 4.The Public Prosecutor,High Court, Madras.

JP (CO)
km/30.5.



सत्यमेव जयते

CrI.R.C.No.727 of 2008

WEB COPY