

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.326 of 2015

K.Baskar

.. Petitioner

Versus

State by
The Inspector of Police
Virudhachalam Police Station
Cuddalore District.

.. Respondent

Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. as against the order dated 20.03.2015 passed by the learned Judicial Magistrate No.I, Virudhachalam, Cuddalore District in C.M.P.No.1247 of 2015 and to set aside the same and order return of the property i.e., crackers and fireworks to the custody of the petitioner forthwith.

For Petitioner	:	Mr. M.R.Jothimanian
For Respondents	:	Mr. T.Arul
		Government Advocate (Crl.side)

ORDER

By an order dated 02.06.2015, this Court disposed of the above Criminal Revision Case by imposing certain conditions for release of the seized goods. However, before signing the order, to clarify the nature of conditions imposed, the above case is listed today under the caption "for clarification".

2. The petitioner has filed the above Criminal Revision Petition challenging the order dated 20.03.2015 passed by the Court below rejecting the

petition filed by him under Sections 451 and 457 of Cr.P.C. for return of property, viz., Crackers and fireworks.

3. The petitioner along with two others were arrayed as accused in Crime No. 580 of 2014 on the file of respondent police for the offences punishable under Section 286 of IPC r/w 9 (B) (i) (b) of Explosive Act, 1884 and Section 3 of Explosive Substances Act, 1980 on the ground that they were found in possession of crackers and fireworks without any valid licence. Accordingly, the explosive articles were seized from the possession of the petitioner and kept in the petitioner's godown. On such seizure, the petitioner has filed a petition under Sections 451 and 457 of Cr.P.C. for return of property namely crackers and fireworks. The Court below dismissed the such application on the ground that as on the date of inspection/seizure, viz., 24.09.2014, the petitioner was not holding any valid licence as his licence had expired on 31.03.2014 itself.

4. The learned counsel for the petitioner submits that the petitioner is the owner of the seized crackers and fireworks. According to the petitioner, he is a license holder for the past more than 20 years. The petitioner was also in possession of licence which was valid upto 31.03.2014. On the expiry of such licence, the petitioner has submitted an application before the authorities along with the requisite renewal fee as early as 25.02.2014 and also produced the challan before the Court below evidencing the same. He would further submit as per Rule 165 (3) of the Explosives Rules, 1983, if the petitioner has submitted the application for renewal 30 days prior to the date of expiry of the original licence, it is deemed that the licence of the petitioner is renewed for a further

period, if the same is not otherwise cancelled or rejected by the authorities. On the strength of the renewal application submitted by him, the petitioner submitted an application before the Court below for return of the seized goods; however the Court below rejected the same on the only ground that the petitioner does not possess valid licence as on the date of seizure. Further, the seized items are kept in the godown for more than a year and they are exposed to heat and dust without proper maintenance which would result in diminishing its utility value. Therefore, having regard to the above facts, the Court below ought to have returned the properties to the petitioner instead of rejecting the application. The learned counsel for the petitioner further prayed this Court to permit the petitioner to sell the crackers. It is further stated that the petitioner is prepared to produce the photographs and videographs and they shall be used as evidence during the time of trial in the criminal case. In any event, since the seized items are explosive articles, they may be released in favour of the petitioner and the petitioner in turn can be permitted to sell the crackers.

5. On the other hand, the learned Government Advocate (Criminal Side) appearing on behalf of the respondent, vehemently opposed the Criminal Revision Petition on the ground that the petitioner did not produce any valid licence for possessing the crackers. However, the learned Government Advocate would contend that the seized goods are kept in a godown and police constables are deployed there for the past more than one year to ensure the safe custody of the seized articles. Inasmuch as the exchequer had incurred loss by deputing police constables towards security of the seized goods, he would submit that the crackers can be returned to the custody of the petitioner

subject to conditions that may be imposed by this Court to safeguard the interest of the prosecution.

6. No doubt, it is true that the petitioner did not produce valid licence for possession of the crackers and fireworks during the inspection conducted on 24.09.2014. Admittedly, the licence also got expired as early as 31.03.2014; however, before the licence period got expired, the petitioner has submitted an application for renewal on 25.02.2014 before the authorities concerned by paying the requisite fee and in order to prove the same, he had also produced the relevant challan before the Court below. Further, as per Section 165 (3) of the Explosives Rules, 1983, when an application for renewal is submitted 30 days prior to the expiry of licence and it was not considered by the authorities, it is deemed that the licence in favour of the petitioner is renewed. The relevant portion is extracted here under for ready reference:

Rule 165. Renewal of license -

(1)

(2)

(3) Every application for the renewal of a license shall be made so as to reach the licensing authority or the authority empowered to renew the license at least 30 days before the date on which the license expires, and if the application is so made, the license shall be deemed to be in force until such date as the licensing authority renews the license or until an intimation that the renewal of the license is refused, has been communicated to the applicant.

7. It is not the case of the prosecution that at the time of the seizure of the goods, the renewal application submitted by the petitioner was rejected or that he was not extended the licence by assigning reason. The application for

renewal submitted by the petitioner was kept pending. Therefore, at best, it could only be construed that the petitioner's licence was renewed. It will be a different matter, if the petitioner is not holding the licence or he has not made any application 30 days prior to the date of expiry of the same.

8. Insofar as the return of property is concerned, it is suffice to state that since the provision is very clear that if an application for renewal of licence is made prior to 30 days before the expiry of earlier licence, then it shall be construed that the licence in favour of the petitioner is renewed. In view of the same, without prejudice to the other proceedings relating to the issue on hand, the order dated 20.03.2015 passed by the learned Judicial Magistrate No.I, Virudhachalam in C.M.P.No.1247 of 2015 is set aside and the Court below is directed to return the property to the petitioner subject to the following conditions:

i) The petitioner shall establish the ownership of the properties in question.

ii) The petitioner shall furnish two sureties for a sum of Rs.15,000/- [Rupees fifteen thousand only] each to the like sum to the satisfaction of the learned Judicial Magistrate No.I, Virudhachalam.

iii) The petitioner shall photograph and videograph the entire goods. It is made clear that the photograph and videograph shall be taken in such a manner that both the cartoon as well as the contents of the cartoon are visible

with respect to the batch number, nature of the fire work and other requisite details so that they can be marked as evidence at the time of trial in the criminal case before the trial court.

9. With the above direction, this Criminal Revision Case is allowed.

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Index : Yes / No

Internet : Yes / No

Note: Issue order copy on 09.06.2015

B. RAJENDRAN, J

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