

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2015
DELIVERED ON : 29.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.28582 of 2014

State rep by
The Station House Officer
P.E. Wing, Kallakurichi
Crime No.66/2014 .. Petitioner

vs.

S.Dhanaraj .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to allow the petition and set aside the order passed by the Court of the Principal District Judge, Villupuram in Crl.Rev.P.No.33/2014 dated 25.08.2014.

For Petitioner : Mr.C.Emalias, APP

For Respondent : Mr.R.Manibharathi

O R D E R

Heard the learned Additional Public Prosecutor appearing for the petitioner and the learned counsel for the respondent.

2. The State has filed this petition under Section 482 Cr.P.C., challenging the order passed by the Court below, directing return of vehicle in Cr.No.66 of 2014 to the respondent. On 19.02.2014, the police intercepted a mini lorry bearing Reg.No.TN-32-4503. On search, they recovered huge quantities of arrack and other contraband, prohibited under the Tamil Nadu Prohibition Act. A case in Cr.No.66 of 2014 for offences under Sections 4(i)(g) 4(i)(aaa) 4(1-A) of Tamil Nadu Prohibition Act, 1937 was registered and investigation was taken up by the police. While so, Dhanaraj filed an application under Section 451 Cr.P.C. in Crl.M.P.No.1705 of 2014 before the learned Judicial Magistrate, Kallakurichi, for return of his vehicle bearing Reg.No.TN-32-4503. The learned Magistrate after hearing both parties, passed an order directing the Investigating Agency to produce the property, namely the vehicle bearing Reg.No.TN-32-4503 before the Court.

3. Aggrieved by the order passed by the learned Judicial Magistrate, on 04.04.2014 in CrI.M.P.No.1705 of 2014, the Investigating Agency filed Criminal Revision Petition No.33 of 2014 before the Sessions Court and the learned Sessions Judge, by order dated 25.08.2014, has directed return of the vehicle to the accused, challenging which the Investigating Agency has come up with this petition under Section 482 Cr.P.C.

4. Under Section 397(3) Cr.P.C., when once a party has approached the Sessions Court, is precluded from once again approaching the High Court in this revisional jurisdiction. In R.S.Misra vs. State of Orissa [2011 (3) MLJ CrI.741 SC], the Supreme Court has held that, when the order passed by the Court below suffers from serious miscarriage of justice, the High Court can invoke its jurisdiction under Section 482 Cr.P.C and set right the anomaly. In this case it is obvious that, the Magistrate had directed the police only to produce the property before the Court, whereas, the learned Sessions Judge went one step ahead and directed that the property be returned to the accused. The power of the Sessions Judge was limited to find out, whether there is any impropriety or illegality on the face of the record in the order of the Magistrate. The Sessions Court has exceeded its jurisdiction in passing the aforesaid order and therefore, it has become imperative for this Court to interfere for setting right the same.

5. At this juncture, the learned Additional Public Prosecutor has submitted that the confiscation proceedings under the Tamil Nadu Prohibition Act has been completed and the vehicle bearing Reg.No.TN-32-4503 has been confiscated under Section 14(4) of the Act. He produced the order dated 14.03.2014 and on a reading of it, it appears that, without giving any fair opportunity to the respondent/accused, the confiscation proceedings has been done in a hurried manner. The order does not give any reasons for confiscating the vehicle. That apart, the police did not inform the Sessions Court about the passing of this order during the proceedings in CrI.R.P.No.33 of 2014. Though an appeal is provided to Sessions Court against the confiscation orders passed by the authority, in this case, the order smacks of such irregularity and illegality, that this Court in exercise of its constitutional powers, is constrained to interfere and quash the same and accordingly, the order in Na.Ka.No.61/2014 passed by the Additional Superintendent of Police, Prohibition and Enforcement Wing, Villupuram, on 10.03.2014 in respect of vehicle bearing Reg.No.TN-32-4503 is hereby quashed. The authority may take fresh proceedings.

6. The Additional Superintendent of Police, Villupuram is directed to issue fresh notice to the parties including Dhanaraj and after giving him an opportunity, pass fresh orders within three months from the date of receipt of a copy of this order. In view of the fact that the Additional Superintendent of Police has initiated confiscation

proceedings, the vehicle need not be produced before the Magistrate as directed by the learned Magistrate in Crl.M.P.No.1705 of 2014 dated 04.04.2014.

With the above directions, this petition is allowed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gms

To

1. Principal District Judge, Villupuram.
2. The Station House Officer, P.E. Wing, Kallakurichi.
3. The Additional Superintendent of Police Villupuram
- 4.The Public Prosecutor, High Court, Madras.

1 cc to Mr.R. Mani Bharathi, Advocate, Sr. 23881

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RJ (CO)
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