



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

Cr1.R.C.(MD)No.130 of 2015

Govindan

.. Petitioner/3rd party/Owner of the Vehicle
Vs.

State represented by
The Inspector of Police,
C.S.C.I.D.,
Thoothukudi,
Thoothukudi District.
(Crime No.202 of 2014)

.. Respondent/Respondent

Prayer: Criminal Revision Petition filed under Section 397(1) r/w 401 Cr.P.C., to call for the records in Cr.M.P.No.755 of 2015 on the file of the learned Judicial Magistrate No.I, Thoothukudi, Thoothukudi District and set aside the order, dated 05.03.2015 and direct the respondent herein to grant the interim custody of the TATA INDICA CAR bearing registration No.TN 05 AC 3093, which has been seized by the respondent herein in Crime No.202 of 2014, dated 30.10.2014.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : Mr.C.Ramesh,
Additional Public Prosecutor

ORDER

By consent, the Criminal Revision is taken up for final disposal.

2. The petitioner claims that he is the registered owner of the Tata Indica DLE Tourist Taxi bearing Registration No.TN05 AC3093 and he has purchased it from the original owner and necessary endorsement has also been made in the registration certificate of the vehicle in R.No.29691/A2/2014, dated 29.10.2014.

3. (i) The vehicle was said to have involved and it was seized on 30.10.2014 in connection with the registration of the case by the first respondent in Crime No.202 of 2014 for the alleged commission of the offences under Sections 6(2)(3)(4) of TNSC Order 1982 r/w 7(1)(a)(ii) of EC Act, 1955, said to have taken place on 30.10.2014.

3.(ii) The petitioner being the registered owner of the said vehicle filed Cr.M.P.No.755 of 2015 under Section 451 of Cr.P.C, praying for interim custody of the vehicle stating among other things that the vehicle is used as a Tourist Taxi and it was taken for hire and on account of seizure of the vehicle, he is not able to carry on his livelihood and praying for return of the vehicle subject to imposition of conditions.



3.(iii) The respondent has filed counter affidavit opposing the said application stating among other things that the rice meant for distribution through Public Distribution System, was transported and strongly opposed the return of vehicle.

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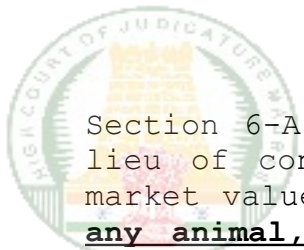
3.(iv) The Court of Judicial Magistrate No.I, Thoothukudi, on taking into consideration the petition and the counter affidavit, has found that any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized, the Court is bared and only the Collector or the judicial authority appointed under Section 6-C of the Essential Commodities Act, 1955, shall have the jurisdiction to deal with the same and cited the said provision, dismissed the petition and challenging the legality of the same, the present revision is filed.

4. Mr.A.Thiruvadikumar, learned counsel appearing for the petitioner has drawn the attention of this Court to the contents of the F.I.R and counter affidavit filed by the respondent and would submit that even as per the case of the prosecution, the vehicle bearing Registration No.TN-20-BL-5533 TATA 1109 was used for transportation of the rice meant for Public Distribution System and in the car owned by the petitioner herein, the other accused had travelled and the learned counsel further invited the attention of this Court to Section 6-E of the Essential Commodities Act, 1955 and would submit that only when the vehicle is used for carrying the contraband/essential commodity, the bar of jurisdiction would come into operation and in the case on hand, admittedly the vehicle in question was not used for the purpose of transporting the essential commodity and hence, there cannot be any impediment in ordering return of the vehicle by way of interim custody and prays for appropriate orders.

5.Per contra, Mr.C.Ramesh, learned Additional Public Prosecutor has strongly opposed this petition by inviting the attention of this Court to the decisions of the Honourable Supreme Court of India in (i) **Oma Ram vs. State of Rajasthan and others** reported in (2008) 5 Supreme Court Cases 502 and (ii) in **P.Pannerselvam vs. State by Inspector of Police, Sathangadu Police Station, Transfer to Civil Supply CID Chennai, Chennai** reported in (2013) 2 MLJ(Cr1) 583, would contend that admittedly the accused had travelled in the car owned by the petitioner and therefore, it can be construed that the vehicle was used for the commission of the offences punishable under the Essential Commodities Act and other allied Laws and taking into consideration the said aspect only, the lower Court has rightly dismissed the petition as not maintainable and prays for dismissal of this petition.

6.This Court heard the rival submissions and also perused the materials available on record.

7. In (2008) 5 Supreme Court Cases 502(cited supra), the appeals challenging the vires of certain provisions of the Excise Act, came up for consideration and the Honourable Supreme Court of India had taken into consideration certain provisions of the Essential Commodities Act, 1955, namely Section 6-A, 6-B, 6-E and further taken into consideration its earlier decision reported in (1990) 3 SCC 549(**Shambhu Dayal Agarwala v. State**), wherein it has been observed that



Section 6-A does not empower the Collector to give an option to pay, in lieu of confiscation of essential commodity, a fine not exceeding the market value of the commodity on the date of seizure, **"as in the case of any animal, Vehicle, Vessel or other conveyance seized along with the essential commodity"**.

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8. Both the judgments were taken into consideration by this Court in the decision reported in (2013) 2 MLJ(Cr1) 583(cited supra) and it has been held that the concerned petitioner has to move appropriate authority under Section 6-C of the Essential Commodities Act, to get the release of the vehicle.

9. The decision relied on by the learned Additional Public Prosecutor would read that Section 6-A of the Essential Commodities Act, does not empower the Collector to give an option to pay, in lieu of confiscation of essential commodity, but in case of any animal, vehicle, vessel or other conveyance, he has got power to order return of vehicle by giving an option to the owner to pay the value.

10. It is relevant to extract Section 6-A of the Essential Commodities Act, 1955:

"[6-A. Confiscation of essential commodity -[(1)] Where any[essential commodity is seized] in pursuance of an order made under Section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector [may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order[may order confiscation of-

(a) the essential commodity so seized;

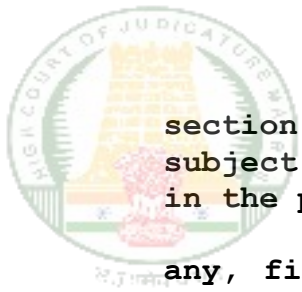
(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:]

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under Section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

[provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.]

[(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-



section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may-

(i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

(3) Where any essential commodity is sold as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale, or auction or other incidental expenses relating thereto, shall-

(a) where no order of confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6-C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted,
be paid to the owner or the person from whom it is seized.]"

11. A reading of the said provision would disclose that bar of jurisdiction relates to any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

12. A perusal of the F.I.R would disclose that admittedly, the vehicle bearing registration No.TN05 AC3093 owned by the petitioner herein, has not been used for transporting the essential commodities namely the rice meant for Public Distribution System.

13. The above cited decision rendered by the Honourable Supreme Court of India, bars a concerned authority from releasing the essential commodity, in lieu of option to pay fine. But in respect of vehicle, the concerned authority is having power to order release of the vehicle subject to payment of fine.

14. Admittedly, in the case on hand, even as per the version of the prosecution, the vehicle owned by the petitioner has not been used for carrying/transporting the essential commodity, but only certain accused said to have travelled in the said vehicle.

15. At this juncture, the learned Additional Public Prosecutor would submit that confiscation proceedings have been initiated in this case. According to the learned counsel appearing for the petitioner, he is yet to receive any notice.

16. In the considered opinion of this Court initiation of confiscation proceedings, is not a bar for returning the vehicle by way of interim custody. The vehicle was seized on 30.10.2014 and nearly five months had lapsed and according to the learned counsel appearing for the petitioner, the vehicle is parked in the open place subject to vagaries of weather and thereby its material value and utility is going down day-by-day.

17. In the light of the above factual aspect, this Court is of the view that the vehicle bearing registration No.TN05 AC3093 (Chassis No.MAT6001369PJ80374, Engine No.4751D103JQZP95264), is ordered



to be returned to the petitioner by way of interim custody subject to certain conditions.

18. In the result, this revision is allowed and the impugned order, dated 05.03.2015, passed in Cr.M.P.No.755 of 2015 by the learned Judicial Magistrate No.I, Thoothukudi, Thoothukudi District, is set aside and the vehicle in question is directed to be returned to the petitioner by way of interim custody subject to following conditions:

(i) The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) with one surety for the like sum to the satisfaction of the learned Judicial Magistrate No.I, Thoothukudi, Thoothukudi District;

(ii) The petitioner shall not alienate and encumber and alter the features of the vehicle and also produce photograph of the vehicle before the concerned Court; and

(iii) The petitioner shall produce the vehicle as and when required by the respondent police.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Thoothukudi,
Thoothukudi District.

2.The Inspector of Police,
C.S.C.I.D.,
Thoothukudi,
Thoothukudi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.Thiruvadi Kumar in SR.No. 15701

sm:08.04.2015:5P/5C

Cr1.R.C.(MD)NO.130 of 2015
30.03.2015