

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2016
(Orders Reserved on : 20.06.2016)

CORAM :

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.657 of 2016

1. Pushpathal
2. Manjula
3. Mangaiarkarasi
4. Minor Subhashree
5. Minor Vishal Petitioners/Appellants
(Minor petitioners 4 and 5 represented
by their Mother and natural guardian
third petitioner)

Vs.

State Rep. by,
The Additional District Superintendent of Police,
Prohibition Enforcement Wing, Coimbatore.

(Crime No.207 of 2014-on the file of the
Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore). Respondent/Confiscating Authority

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records and set aside the order dated 18.01.2016 made in C.A.No.131 of 2014 on the file of the III Additional District and Sessions Court, Coimbatore, which confirmed confiscation order passed by the respondent dated 23.06.2014 and as well as the consequential final order dated 28.07.2014 made in C.No.61/ADSP/PEW/CBE/2014 and direct the respondent to return the Vehicle, a Mahendra Quanta Jeep bearing Registered No.TN-38-BT-0352 to the petitioners.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : Mr.M.Mohamed Riyaz,
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is preferred by the petitioners praying to call for the records and set aside the order dated 18.01.2016 made in C.A.No.131 of 2014 on the file of the III Additional District and Sessions Court, Coimbatore, which confirmed the confiscation order passed by the respondent dated 23.06.2014 and as well as the consequential final order dated 28.07.2014 made in C.No.61/ADSP/PEW/CBE/2014 and direct the respondent to return the Vehicle, a Mahendra Quanta Jeep bearing Registered No.TN-38-BT-0352 to the petitioners.

2. It is admitted on the side of the petitioners that the present petitioners are the legal representatives of the deceased Manian @ Ganja Mani, who is the first accused in Crime No.207 of 2014.

3. The learned counsel for the petitioners would mainly contend that the confiscating authority, before passing the order, failed to give notice to the financier of the vehicle, who is the real owner of the present vehicle. Even though R.C. book of the vehicle stands in the name of the first accused/Manian @ Ganja Mani, till the entire finance amount is settled, financier alone is the owner of the vehicle. Hence, non-issuance of notice to the financier is barred in law and the order of the trial Court has to be set aside. It is further contended that the trial Court failed to look into the fact that the deceased/owner of the vehicle was in the hospital in a very sick condition when the show cause notice was served on 05.06.2014. Further, he was taken to Advisory Board on a wheel-chair for a hearing on 13.06.2014 and further, due his worst physical condition, he was admitted in the Government Hospital, Chennai. It is also contended by the learned counsel for the petitioners that the confiscation order was passed by the confiscating authority without giving sufficient opportunity to the owner of the vehicle and confiscating authority also failed to issue notice to the owner of the vehicle. Hence, the order of the trial Court has to be set aside and the criminal revision case has to be allowed.

4. The learned Government Advocate (Crl.Side) would contend that the III Additional District and Sessions Court, Coimbatore, after considering the entire facts and circumstances of the case, passed appropriate order and therefore, there is no infirmity or illegality in the order passed by the Court below and hence, he prayed that the Criminal Revision Case has to be dismissed.

5. This Court heard the arguments of both sides and perused the records.

6. On a perusal of the case records, it is seen that Crime No.207 of 2014 was registered against Manian @ Ganja Mani and four others under Section 4(1) (aaa) of TNP Act. Further, on a perusal of the FIR, it is seen that on 22.04.2014 at about 11.00 a.m. when the Inspector of Police, Periyannayakkanpalayam inspected the vehicle TN-38-BT-0352, they arrested the deceased Manian @ Ganja Mani, who is the first accused, Karthick/second accused and Ravi/third accused and on the basis of the confession given by the accused, the police seized 1460 brandy bottles and after that, the Additional District Superintendent of Police, Prohibition Enforcement Wing, Coimbatore, given a confiscation notice to the owner of the vehicle Manian @ Ganja Mani on 02.06.2014 and it was served on him through the jail Superintendent of Police, Coimbatore. After serving of notice to the first accused/Manian @ Ganja Mani, since there was no explanation offered on the side of the first accused, the Additional District Superintendent of Police, Prohibition Enforcement Wing, Coimbatore, ordered to confiscate the vehicle. The learned counsel for the petitioners mainly contended that the vehicle is under the custody of financier and the real owner of the vehicle is finance company i.e., M/s. Syndicate Bank, Mettupalayam Road, Veerapondi, Coimbatore, to whom the vehicle is hypothecated. Hence, the owner of the vehicle is Syndicate Bank alone and non-issuance of notice to the owner of the vehicle is fatal to the facts of the present case.

7. In this case, it is admitted on the side of the petitioners that R.C. book stands in the name of the first accused/Manian @ Ganja Mani and the Syndicate Bank is only the financier to give loan to the first accused. Since the vehicle was purchased under hire purchase agreement with Syndicate Bank, R.C. book stands in the name of A.1. Hence, the first accused is the real owner of the vehicle and the financier i.e., Syndicate Bank is not the owner of the vehicle. The alleged financier viz., Syndicate Bank has not filed any petition to implead himself as a party to the present petition or it has not filed any separate petition to cancel the confiscation order passed by the Additional District Superintendent of Police, Prohibition Enforcement Wing, Coimbatore.

8. In view of the above circumstances, the argument of the learned counsel for the petitioner that Syndicate Bank is the real owner of the vehicle and non-issuance of notice to the Syndicate Bank is fatal to the case, is not at all acceptable and that argument is liable to be rejected.

9. In this case, the present petitioners are the legal representatives of late Manian @ Ganja Mani/first accused. Hence, the order was passed against the first accused and the

Additional District Superintendent of Police, Prohibition Enforcement Wing, Coimbatore, after giving notice to A.1/deceased, passed confiscation order. Hence, the first accused has not filed any objection. In view of the above fact that since the first accused has not raised any objection with regard to the confiscation order, the allegation of the petitioners is not at all acceptable and the argument is liable to be rejected. Hence, the Court below correctly came to a conclusion and the permission granted to the petitioners to get rid of the vehicle on payment of amount stated in the Court below is quite reasonable.

10. Hence, this Court is of the considered view that there is no infirmity or illegality in the order passed by the Court below. This Court finds no reason to interfere with the order passed by the Court below which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Court, Coimbatore.
2. Do Through The Principal Sessions Judge, Coimbatore.
3. The Additional District Superintendent of Police, Prohibition Enforcement Wing, Coimbatore.
4. The Public Prosecutor, High Court, Madras.

+1cc to Mr.P.M.Duraiswamy, Advocate, S.R.No.56039

Cr1.R.C.No.657 of 2016

MV(CO)
CA(22/10/2016)