

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.867 of 2016

and

Crl.M.P.Nos.6616 and 6617 of 2016

Venkateswaralu Petitioner/Accused

Vs.

State by Inspector of Police,
Ponneri Police Station, PEW,
Ponneri, Thiruvallur District.
(Crime No.267 of 2016) Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order dated 06.06.2016 passed by the learned Judicial Magistrate No.II, Ponneri, in Crl.M.P.No.2642 of 2016.

For Petitioner : Mr.R.Ramesh

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

ORDER

This Criminal Revision Case is directed against the order dated 06.06.2016 passed by the learned Judicial Magistrate No.II, Ponneri, in Crl.M.P.No.2642 of 2016, in Crime No.267 of 2016, dismissing the petition filed by the revision petitioner for return of property i.e., two wheeler Honda CB Twister BS111 bearing Registration No.TN-18-F-1987.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

3. The learned counsel appearing for the petitioner vehemently contended that the above said vehicle namely Two Wheller, Honda CB Twister BS111 bearing Registration No.TN-18-F-1987 belongs to the petitioner and on the fateful day i.e., on 30.04.2016, the petitioner's cousin brother namely V.Raji used the said vehicle for celebrating the Labour Day Function and after purchase of 9 Beer bottles, he returned to the company at about 7.30 p.m. At that time, the respondent

police seized the said vehicle along with the alcohol and subsequently, registered a case in Crime No.267 of 2016 for the offence under Section 4-1(a) of T.N.P. Act. The vehicle was seized by the respondent police without hearing the request of the revision petitioner and his cousin brother Raji. It is further submitted by the learned counsel for the petitioner that the petitioner undertakes to produce the vehicle as and when required by the Court and also undertakes that he will not change, alter or sell the said vehicle till the disposal of the case. The learned counsel for the petitioner further submitted that the learned Magistrate, without applying the mind, had erroneously dismissed the petition filed for interim custody of the vehicle and hence, he prayed that the order passed by the learned Judicial Magistrate No.II, Ponneri, may be set aside and this Criminal Revision Case may be allowed and the vehicle i.e., Two Wheeler, Honda CB Twister BS111 bearing Registration No.TN-18-F-1987 may be returned to the petitioner.

4. The learned Government Advocate (Crl.Side) has filed a status report and vehemently contended that the vehicle was seized by the respondent police and the case was registered for the alleged offence under Section 4-1(a) of T.N.P. Act. and after the vehicle was seized, notice was issued to the petitioner directing him to appear before the Additional Superintendent of Police within 10 days. But the petitioner has failed to appear before the Additional Superintendent of Police and hence, the Additional Superintendent of Police served Confiscation Order vide M-1/43/ADSP/PEW/TVLR/2016, dated 28.05.2016 to the petitioner in person and the same was acknowledged by the petitioner on 05.06.2016. After receiving the above said confiscation order, the petitioner filed a petition in C.M.P.No.2642 of 2016 before the learned Judicial Magistrate No.II, Ponneri, for return of the vehicle i.e., Two Wheeler Honda CB Twister BS111 bearing Registration No.TN-18-F-1987 under Sections 451 and 457 of Cr.P.C. and the said petition was correctly dismissed by the learned Magistrate. There is no illegality or infirmity in the order passed by the learned Judicial Magistrate No.II, Ponneri, and hence, the learned Government Advocate prayed that the criminal revision case may be dismissed.

5. In this case, admittedly, the vehicle was used for the transportation of Beer bottles and the petitioner's brother namely Raji was arrested and subsequently, released on bail and the case is pending. Further, it is admitted by the learned counsel for the revision petitioner that notice was served on the revision petitioner and he did not appear before the Additional Superintendent of Police or raised any objections. Further, it is admitted that the confiscation order dated 28.05.2016 was served on the petitioner and the petitioner acknowledged the same on 05.06.2016. Only after the confiscation order was passed and the same was received by the revision petitioner, the petition, seeking interim custody

of the vehicle, was filed by the petitioner before the learned Judicial Magistrate No.II, Ponneri,

6. In this case, it is useful to refer Section 14 of the Tamil Nadu Prohibition Act, 1937, which reads as follows:-

"14. Confiscation how ordered.- (1) When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the court decides that anything is liable to confiscation, such confiscation [shall be ordered by the court].

(2)

(3)

(4) Notwithstanding anything contained in sub-sections (1) to (3), the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given -

(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle;

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation ; and

(iii) a reasonable opportunity of being heard in the matter :

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.

(5) Any person aggrieved by an order of confiscation under sub-section (4) may, within one month from the date of the receipt of such order, appeal to the Court of Sessions having jurisdiction."

7. On a perusal of the above said provision, it is clear that if any confiscation order was passed, the aggrieved person has to prefer an appeal before the Court of Sessions.

In this case, admittedly, the petitioner was served with a

notice of confiscation, but he has not objected. After receiving the confiscation order on 28.05.2016, the revision petitioner has to prefer an appeal before the Appellate Authority/Court of Sessions, as provided under sub Section 5 of Section 14 of the Tamil Nadu Prohibition Act, 1937. But, straightaway, the petitioner has filed a petition before the learned Judicial Magistrate No.II, Ponneri, for return of vehicle. The learned Magistrate correctly dismissed the said petition observing that the petitioner has to approach only the appropriate appellate authority for custody of vehicle. There is no infirmity or illegality in the order passed in C.M.P.No.2642 of 2016 by the learned Judicial Magistrate No.II, Ponneri. This Court finds no reason to interfere with the order passed by the learned Judicial Magistrate No.II, Ponneri, which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

8. In the result, this Criminal Revision Case is dismissed with liberty to the petitioner to file an appeal before the Appellate Authority, according to law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Ponneri.
2. The Inspector of Police,
Ponneri Police Station, PEW,
Ponneri, Thiruvallur District.
3. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.R. Ramesh, Advocate SR.42722

Cr1.R.C.No.867 of 2016

CA(CO)
EU 11.08.16