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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2016

(Orders Reserved on 15.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.776 of 2016

Rajkumar : Petitioner

Vs.

State Rep. By its
The Inspector of Police,
Vallam Police Station,
Thanjavur District. : Respondent

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order passed by Learned Judicial Magistrate No.II, Thanjavur in Cr.M.P(MD)No.5204 of 2016, dated 26.09.2016 and set aside the same and direct the learned Judicial Magistrate to give interim custody of the Maruthi Swift Dzire, bearing Registration No.TN-49-AQ-9423.

For Petitioners : Mr.A.Arun Prasad

For Respondent : Mr.P.Kandasamy
Government Advocate (Cr1.Side)

ORDER

This Criminal Revision Case is filed praying to call for the records pertaining to the order passed by the Learned Judicial Magistrate No.II, Thanjavur in Cr.M.P(MD)No.5204 of 2016, dated 26.09.2016 and set aside the same and direct the Learned Judicial Magistrate to give interim custody of the vehicle viz., Maruthi Swift Dzire, bearing Registration No.TN-49-AQ-9423.

2. Brief facts in nutshell are as under :-

(i) The respondent Police seized the vehicle viz., Maruthi Swift Dzire, VDI BS IV, bearing Registration No.TN-49-AQ-9423, in Crime No.359 of 2016, on the file of the Inspector of Police, Vallam Police Station, Thanjavur District, from one Radha Krishnan against whom the FIR was registered on 02.09.2016, for an offence



under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937 (hereinafter referred to as "the TNP Act"), The petitioner herein is not cited as an accused in the above case. The said criminal case is pending in the FIR stage, for investigation.

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(ii). The petitioner claims that he is the owner of the seized vehicle. He filed a petition in Cr.M.P(MD)No.5204 of 2016, before the Learned Judicial Magistrate No.II, Thanjavur, seeking interim custody of the seized vehicle, as owner of the vehicle, contending that unless the vehicle is handedover to the petitioner / owner's custody, nothing will remain at the end of the trial, except the skeleton of the vehicle.

(iii). The respondent police objected the return of the seized vehicle to the petitioner stating that the case property has been seized under Mahazar and has been sent to the ADSP/PE Wing custody, for confiscation of the property to the Government, under Section 14(4) of TNP Act.

(iv) The learned Magistrate after hearing both sides dismissed the said petition for interim custody, considering the objections raised by the prosecution stating that Judicial Magistrate ceased to have the jurisdiction to entertain the application once under Section 14(4) of the TNP Act proceedings has been started.

3. The present Revision has been filed for setting aside the impugned order passed by the Learned Judicial Magistrate No.II, Thanjavur in Cr.M.P(MD)No.5204 of 2016, dated 26.09.2016 and to direct the Learned Judicial Magistrate to give interim custody of the vehicle in question.

4. Mr.A.Arun Prasad, the learned counsel appearing for the petitioner would submit that the petitioner is the owner of the case property viz., Maruthi Swift Desire VDI BS IV, bearing Registration No.TN-49-AQ-9423, seized under the Mahazar, by the respondent police, in Crime No.357 of 2016, from one Radhakrishnan, who is an accused in this case. He would further submit that there is no rival claim of the said seized vehicle so far. The Learned counsel for the Petitioner to lend support to his contention that 'pendency of confiscation proceedings cannot be a bar for granting interim custody of vehicle' seeks in aid of the decision of this Court in **Sakthidevi Vs. State by the Inspector of Police, Thittachery Police Station, Nagapattinam District** reported in **(2011 (4) MLJ (Cr1) 634)** and as well as the decision of the Hon'ble Apex Court in **Sunderbai Ambalal Desai V. State of Gujarat** reported in **(2003 SCC (Cr1.) 1943)**.



5. Mr.P.Kandasamy, the learned Government Advocate (crl.side) for the respondent reiterates the very same objection before this Court contending that, since the confiscation proceedings has been initiated under Section 14(4) of TNP Act, by the competent authority, the learned Judicial Magistrate has rightly dismissed the petition for interim custody filed by the revision petitioner and therefore, prayed for dismissal of this Revision.

6. I have heard the submissions made by Mr.A.Arun Prasad, the learned counsel appearing for the petitioner and Mr.P.Kandasamy, the learned Government Advocate (crl.side) for the State and also perused the materials available on record.

7. On perusal of the records would disclose that the stage of confiscation proceedings is not intimated to the learned Magistrate, before passing the said order or to this Court. Further, on perusal of the impugned order would disclose that, since the confiscation proceedings have been initiated in respect of the vehicle in this matter and it is pending, the learned Magistrate dismissed the petition for return of the interim custody of the vehicle. It is needless to state that the mere pendency of the confiscation proceedings is not a bar for granting the relief of interim custody of the vehicle under Section 451 Cr.P.C.,

8. In view of the forgoing discussion, this Criminal Revision Case is allowed and the order passed by the Learned Judicial Magistrate No.II, Thanjavur in Cr.M.P(MD)No.5204 of 2016, dated 26.09.2016, is set aside. The Learned Judicial Magistrate No.II, Thanjavur, is directed to return the vehicle viz., Maruthi Swift Dzire, VDI BS IV, bearing Registration No.TN-49-AQ-9423, to the petitioner, on the following terms.

a. The petitioner shall produce the original R.C.Book and other relevant records, if any, to prove his ownership to the learned Magistrate and the learned Magistrate, on perusal of the R.C.Book and other records, retaining the xerox copy of the same, shall return the original documents, to the Revision Petitioner.

b. The petitioner shall not alienate or alter the vehicle in any manner, till the adjudication is over.

c. The petitioner shall execute a personal bond for a sum of Rs.4,00,000/-, to the satisfaction of the learned Judicial Magistrate No.2, Thanajvur.



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d. The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent, by the court below and as well as by the Authorized Officer in that behalf by the Government.

Sd/
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.II, Thanjavur,
 - 2.The Inspector of Police, Vallam Police Station,
Thanjavur District.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 - 4.The Record Keeper, Vernacular Section
Madurai Bench of Madras High Court.
- +1cc to M/s.A.Arun Prasad, Advocate, in SR No.72759.

Order made in
Crl.RC(MD)No.776 of 2016
Dated:- 24.11.2016

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msm/28.11.16/skn/sarAE/p4/6c