

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 21.12.2017****CORAM:****THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED****Cr1.RC(MD)No.847 of 2017****WEB COPY**

Jeyasankar

: Petitioner

Vs.

1. The Additional Superintendent of Police,
I/C.Prohibition Wing,
Virudhunagar District,
Virudhunagar.

2. The Sub-Inspector of Police,
Thalavaipuram Police Station,
Tirunelveli District
In Crime No.414 of 2017

: Respondent

PRAYER: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records the order passed by the learned Judicial Magistrate, Rajapalayam in Cr.M.P.No.8563 of 2017, dated 31.10.2017 and set aside the same and allow this Criminal Revision Petition.

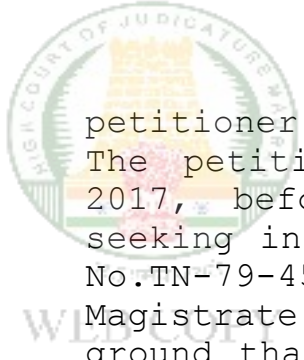
For Petitioner : Mr.M.Ramu

For Respondents : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor**ORDER**

This Criminal Revision Petition has been filed praying to set aside the order passed by the learned Judicial Magistrate, Rajapalayam in Cr.M.P.No.8563 of 2017, dated 31.10.2017.

2. The Criminal Revision is taken up for final hearing, in the admission stage itself, with the consent of the learned counsel appearing for either side.

3. Admittedly, the petitioner herein is an accused in Crime No.414 of 2017 registered on 15.10.2017, under Section 4(1) (a) of Tamil Nadu Prohibition Act (Transport) by the respondent for illegal selling of liquor containing 26 bottles of 180 ml each in his two wheeler, bearing Registration No.TN-79-4572, TVS Scooty Pep. The petitioner was arrested and the above said vehicle was also seized and produced before the learned Judicial Magistrate at Rajapalayam, and now the vehicle is in custody of the respondent Police. Since the said vehicle is kept in open place attracting natural calamities and moisture, there is every possibility that the condition of the vehicle would be deteriorated. The

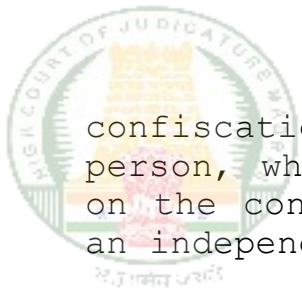


petitioner is differently abled person [physically handicapped]. The petitioner has filed an application in Cr.M.P.No.8563 of 2017, before the learned Judicial Magistrate at Rajapalayam, seeking interim custody of his two wheeler, bearing Registration No.TN-79-4572, during pendency of the case. The learned Judicial Magistrate dismissed the above petition on 31.10.2017 only on the ground that the confiscation proceedings had been initiated under Section 14(4) of the Tamil Nadu Prohibition Act, as against the vehicle in question and also the petitioner was already convicted in prohibition cases for selling liquor illegally.

4. Aggrieved by the order of dismissal, the present Criminal Revision is filed before this Court by the Revision Petitioner herein. The respondent also filed a counter statement stating that after completing the investigation, charge sheet was also laid and, if the vehicle is returned to the petitioner, there are chances of absconding of the petitioner along with his two wheeler and also chances of selling the above said two wheeler, which was seized in this case.

5. Perused the materials on record. Heard and considered the rival submissions made by either parties.

6. The ownership of the petitioner upon the two wheeler, bearing Registration No.TN-79-4572, seized from the petitioner herein is admitted. The seized vehicle is said to be involved in the commission of the offence. The seizure of the said vehicle and production before the learned Judicial Magistrate at Rajapalayam and also the present custody of the vehicle with the respondent Police are not denied in this case. The petitioner is also an accused in this case and charge sheet was also filed. Copy of the R.C., in respect of the vehicle seized in question is also filed. Confiscation proceedings were initiated in respect of the seized vehicle against the petitioner and the same is also pending. The copy of the show-cause notice dated 03.11.2017, issued by the first respondent herein is also filed, for perusal of this Court. There is no rival claim in respect of the vehicle. Legally there is no bar seeking interim custody of the seized vehicle, while confiscation proceedings are pending against the petitioner. The counsel for the petitioner refers the orders passed by the Principal Bench of this Court, dated 09.12.2016 in CrI.R.C.No.1379 of 2016 between Murugadoss and The State by the Inspector of Police, Prohibition & Excise Wing, Kottakuppam Police Station, Villupuram District and also the orders passed by this Court dated 19.06.2015, in CrI.R.C(MD)No.238 of 2015 between Alex Pandian and The State Rep. By the Sub-Inspector of Police, Thirumangalam Prohibition Excise Wing, Madurai District, wherein it has been held that "The view taken by the learned Magistrate in said proceedings was pending, the petition for interim custody of the vehicle is not maintainable, is not correct. It is too well settled that during the pendency of



confiscation proceeding, the vehicle needs to be returned to the person, who is entitled to have. This return will have no impact on the confiscation proceeding, as the confiscation proceeding is an independent proceeding."

7. The above decisions are squarely applicable to the case on hand. There is no impediment in granting interim custody of the seized vehicle in view of the guidelines laid down by the Apex Court in **Sundarbhai Ambalal Desai Vs. State of Gujarat** reported in (2003 (1) CTC 175).

8. In view of the above, the Criminal Revision is allowed and the order of the learned Judicial Magistrate at Rajapalayam in Cr.M.P.No.8563 of 2017, dated 31.10.2017 is set aside and the learned Magistrate, is directed to return the vehicle in question subject to the confiscation proceedings, to the petitioner, on the following conditions.

(i) The petitioner shall execute a personal bond for a sum of Rs.50,000/-.

(ii) The petitioner shall not make any alteration or sale of the vehicle.

(iii) The petitioner shall deposit the original Registration Certificate of the vehicle before the trial Court.

(iv) The vehicle shall be photographed in different angles at the cost of the petitioner and shall be kept along with the case records.

(v) Panchanama is to be prepared at the time of handing over the vehicle.

(vi) The petitioner shall produce the vehicle before the Court as and when required, until final order is passed in the confiscation proceedings.

9. The Authority under Tamil Nadu Prohibition Act may proceed with the confiscation proceedings and the petitioner shall obey the order passed by the said proceedings by the Authority.

Sd/-

Assistant Registrar(AE)

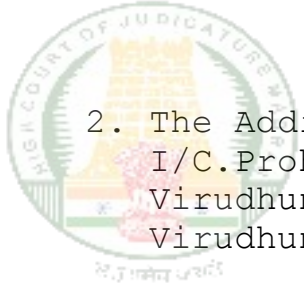
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Sub Assistant Registrar

To

1. The Judicial Magistrate,

<https://hcservices.ecourts.gov.in/hcservices/>
Rajapalayam.



2. The Additional Superintendent of Police,
I/C.Prohibition Wing,
Virudhunagar District,
Virudhunagar.

3. The Sub-Inspector of Police,
Thalavaipuram Police Station,
Tirunelveli District

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

5. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1cc to Mr.M.Ramu, Advocate Sr.No.94696

MPK

VB/SV/MMS/SAR4/09/01/2018/4P/7C

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21.12.2017