

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 27.07.2018]

[Pronounced on : 06.09.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.355 of 2016
and
Crl.M.P.No.2420 of 2016

The State represented by
The Inspector of Police,
Prohibition and Enforcement Wing,
Poonamallee, Chennai.
(Crime No.533 of 2011) ..Petitioner/Complainant

.. Vs ..

Khader Meeran ..Respondent/A.2

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order passed in Crl.M.P.No.849 of 2015 in S.C.No.68 of 2014, dated 07.01.2016 on the file of the Subordinate Court, Kancheepuram, and prays for setting aside the above order.

For Petitioner : Mr.R.Surya Prakash,
Government Advocate

For Respondent : Mr.M.Babu Muthu Meeran

ORDER

The state is the revision petitioner.

2. The respondent herein is the second accused in S.C.No.68 of 2014 on the file of the Subordinate Court, Kancheepuram and he has filed a petition in Crl.M.P.No.849 of 2015 in S.C.No.68 of 2014 under Section 452 (1) of Cr.P.C. for return of vehicle namely Mahendra Scarpio car bearing Registration No.TN-01-AK-0033. The said petition was allowed by the learned Assistant Sessions Judge, Kancheepuram, dated 07.01.2016 directing the respondent therein/revision petitioner herein to return the vehicle to the respondent herein/A.2. As against the said order, the present Criminal Revision Case has been filed by the State.

3. Learned Government Advocate (CrI.Side) appearing for the revision petitioner has submitted that the trial Court has committed an error by ordering return of vehicle to the respondent herein/A.2, since the registration of ownership of the respondent/A.2 is not being proved in the manner known to law and hence, prayed for allowing of the criminal revision case by setting aside the order passed by the trial Court.

4. Per contra, the learned counsel appearing for the respondent/A.2 would submit that the second accused is the owner of the vehicle as per the R.C.Boook issued by the competent authority and made submissions in support of the order of the trial Court.

5. The point for consideration is whether the order of the trial Court is sustainable in law?

6. The State has come forward with a specific plea that on the date of occurrence i.e., on 28.02.2011, the vehicle was registered in the name of Khadar Meeran/respondent herein as per the Certificate issued by the Assistant Registering Authority, Ayanavaram, dated 16.02.2016. However, the Assistant Registering Authority, Ayanavaram, has issued certificate stating that one Kulabudeen is the owner of the vehicle. Therefore, the order returning the vehicle to the respondent herein/A.2 is erroneous in law.

7. It is seen from the records, the chequered history of the case is that for the alleged offence under the Tamil Nadu Prohibition Act, (hereinafter referred to as TNP Act), the Investigating Officer has arrested the first accused namely, Sulaimaan @ Bajbai on 28.12.2011 and seized the vehicle namely, Mahendra Scarpio car having Registration No.TN-01-AK-0033. The Investigating Officer has intimated the confiscation proceedings under Section 14 (a) of TNP Act to the Court. The respondent herein had approached the Judicial Magistrate Court at Sriperumbudur by filing a petition in C.M.P.No.10342 of 2012 seeking return of his Scorpio car bearing Registration No.TN-01-AK-0033. The prosecuting agency, after ascertaining the fact that the respondent herein is the present owner, has passed the final confiscation order on 15.02.2013 and the learned Magistrate has held that interim custody of the vehicle cannot be granted to the second accused. Hence, the respondent herein/A.2 has approached this Court by filing a writ petition in W.P.No.24755 of 2014 and this Court, by an order dated 10.06.2015, partly allowed the writ petition and has held that the first respondent therein/Additional Deputy Commissioner of Police, should have served notice on the second accused and remanded the matter to the Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, for issuing fresh notice to the petitioner therein/A.2.

8. The Prohibition Officer in charge of the District can order confiscation of vehicles used for commission of offence

under Section 14(4) of the TNP Act. But the owner of the vehicle has to be given a notice in writing informing him the grounds on which it is proposed to confiscate the vehicle and he has to be given an opportunity to make his representation in writing within a reasonable time not exceeding 14 days. As per the directions given by this Court, the Prohibition Officer in charge of the District has not issued a notice in writing informing the grounds of confiscation to the respondent herein and has not given him an opportunity of making representation.

9. The learned Judge, after perusing the reply given by the Additional Deputy Commissioner of Police, Prohibition and Enforcement Wing, has observed that even after the orders passed by the High Court dated 10.06.2015, the prosecution has not taken efforts to take proceedings under Section 14(4) of the TNP Act giving notice to the respondent herein, who is the petitioner therein. Based upon the reply filed before the trial Court, a finding of fact has been recorded stating that the prosecution has not produced any document to prove that notice has been sent to the address namely, Old Door No.2, New Door No.7, Venkateswara Street, Chrompet, Chennai - 44. Taking note of the fact that the respondent herein/A.2 was acquitted in S.C.No.68 of 2014 and also relying upon the registration certificate issued by the competent authority, the trial Court has correctly passed an order holding that the respondent herein is the owner of the vehicle viz., Mahendra Scorpio car bearing Registration No.TN-01-AK-0033, and hence, confiscation order has not been passed in due compliance to the order passed by this Court and set aside the confiscation order passed under Section 14(4) of the TNP Act, and as the Additional Deputy Commissioner of Police has failed to take action within a reasonable time and the respondent's name is found in the certificate issued by RTO, ordered for return of the vehicle to the respondent herein and the said factual background found to be correct and it does not call for any interference. Accordingly, this Criminal Revision Case is liable to be dismissed.

10. In the result, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Kancheepuram.

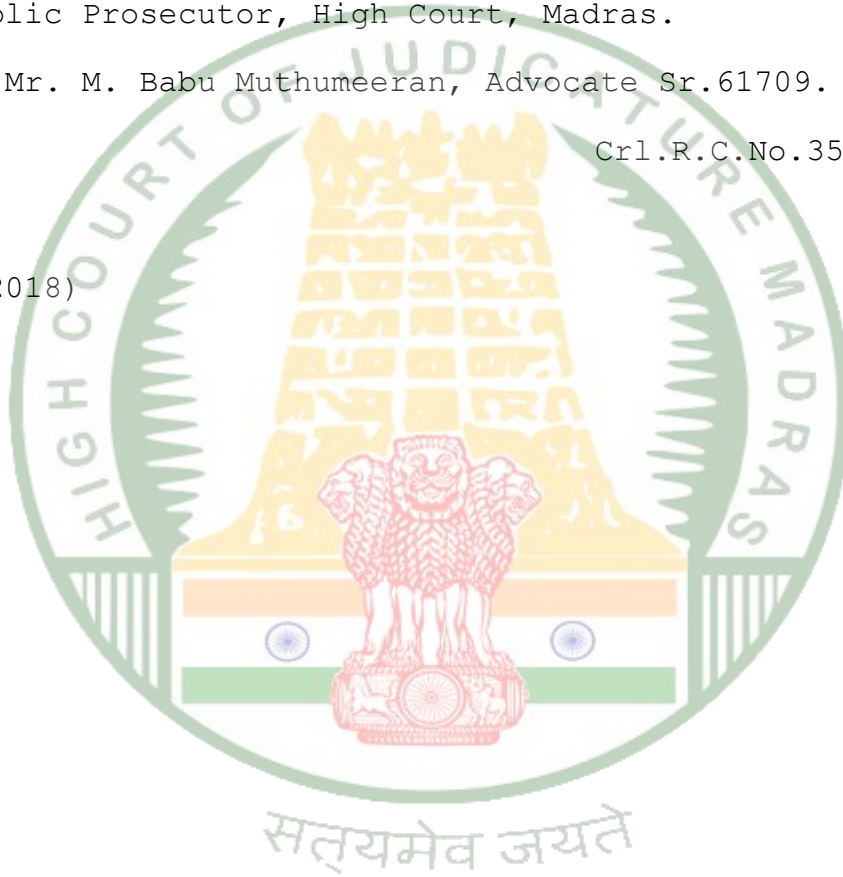
2. The Inspector of Police, Prohibition and
Enforcement Wing, Poonamallee, (Kundrathur),
Chennai-69.

3. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. M. Babu Muthumeeran, Advocate Sr.61709.

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GJ-II (CO)
EU(28/09/2018)



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