

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 10.01.2018**

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CORAM:**THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED****Crl.RC(MD)No.902 of 2017**

R.Sathiyendran

: Petitioner / Petitioner

Vs.

The Sub-Inspector of Police,
Keelaparalachi Police Station,
Virudhunagar District,
Crime No.99 of 2017

: Respondent / Respondent

PRAYER: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in Crl.M.P.No.5736 of 2017 on the file of the learned Judicial Magistrate, Aruppukottai, dated 23.11.2017 and set aside the same and consequently direct the respondent Police to hand over the vehicle (Hero Splender Pro-TN-67-BZ-1658) to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.R.Venkatesan
For Respondent : Mr.A.Robinson,
Government Advocate.

ORDER

This Criminal Revision Case is filed praying to set aside the order passed in Crl.M.P.No.5736 of 2017 by the learned Judicial Magistrate, Aruppukottai, dated 23.11.2017 and consequently, direct the respondent Police to hand over the vehicle (Hero Splender Pro-TN-67-BZ-1658) to the petitioner.

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. The respondent Police has registered a case in Crime No.99 of 2017 on 04.11.2017, for the offence under Section 14(1)(a) of Tamilnadu Prohibition Act r/w 14(A) of Transport Act, against petitioner herein. The two wheeler viz., Hero Splender Pro, bearing Registration No.TN-67-BZ-1658 was also seized from the petitioner, since the said vehicle was said to be used in the commission of offence of possession and transporting 31 bottles of Brandy in a white gunny bag, for selling the same in the nearby villages.



4. The petitioner has filed an application in Crl.M.P.No.5736 of 2017, seeking interim custody of the said vehicle from the learned Judicial Magistrate, Aruppukottai, under Sections 451 & 457 of Cr.P.C., and the said petition was dismissed on 23.11.2017, by the learned Judicial Magistrate, Aruppukottai stating that the said seized vehicle was produced before the Additional Superintendent of Police, Prohibition Wing, Virudhunagar, for initiating confiscation proceedings under Section 14(4) of Tamilnadu Prohibition Act, 1937 and hence, the said vehicle cannot be given to the custody of the petitioner. Aggrieved by the order of dismissal, the petitioner has filed the present Revision Petition before this Court for the aforesaid relief.

5. The learned counsel appearing for the revision petitioner would submit that the vehicle has been kept idle and it is being kept in open sky and ultimately it will become a scrap value. The revision petitioner will participate in the confiscation proceedings, if initiated and if any adverse order is passed, he will challenge it before the competent authority and hence, there is no bar for interim custody of the seized vehicle. The learned counsel, in support of his contentions, has relied on an unreported decision of the Principal Bench of this Court in **S.Vijaya Vs. The Sub-Inspector of Police, Peralam Police Station & Others** in **Crl.R.C.No.248 of 2016**, dated 28.04.2016.

6. The learned Additional Public Prosecutor appearing for the respondent would submit based on the counter statement that show-cause memo for production of the original Registration Certificate of the vehicle was issued and served on 18.11.2017 upon the petitioner, but RC Original is not yet produced.

7. Perused the materials available on record. Heard and considered the arguments advanced by either side.

8. Admittedly, the two wheeler viz., Hero Splendor Pro, bearing Registration No.TN-67-BZ-1658 was seized on 04.11.2017 from the Revision petitioner / accused, since it was said to be used for transporting Brandy bottles in a Gunny bag illegally and was forwarded to the Additional Superintendent of Police, Prohibition Wing, Virudhunagar District, for initiating confiscation proceedings. As per the decision of the Hon'ble Apex Court reported in **(AIR 1978 SC 1282) Ram Prakash Sharma Vs. State of Haryana** that a Court of law has power to order release of property seized from any person in connection with an offence, even though the property was not produced and the trial of the main case has not commenced. The custody of the vehicle can be entrusted to its registered owner during the pendency of trial temporarily subject to certain conditions, as per the decision of the Apex Court reported in **2001 (10) SCC 88 (Rajendran Prasad Vs. State of Bihar)**, when the complaint is filed in Court, the vehicle seized by the Police



becomes a part of the complaint and it is deemed that the vehicle is also in the Court. If at all, a vehicle is meant for use, the user and the owner should not be deprived of such use.

9. No records pertaining to the confiscation proceedings is produced by the respondent for perusal of this Court to know about the stage of confiscation proceedings. The issuance of show-cause memo, dated 14.11.2017 does not find in the impugned order. Admittedly, there is no rival claim in respect of the said seized vehicle in this case. Further, there is no dispute that the petitioner is the owner of the seized vehicle. However, concerned learned Magistrate also decides the ownership of the said vehicle on production of relevant documents by the petitioner. The respondent Police stated that investigation in this case was completed and final report is yet to be filed. The reasons assigned by the learned Magistrate in its impugned order in refusing to grant interim custody is not correct one.

10. Considering the above facts and circumstances of the case and also the dictum laid down by the Hon'ble Apex Court in the Judgment in **Sundarbhai Ambalal Desai Vs. State of Gujarat** reported in **(2003 (1) CTC 175)**, this Court orders as under:

(i). This Criminal Revision Petition is allowed by setting aside the impugned order, dated 23.11.2017 passed in CrI.M.P.No.5736 of 2017 by the learned Judicial Magistrate, Aruppukkottai.

(ii). Respondent Police is directed to produce the seized vehicle, viz., Hero Splender Pro-TN-67-BZ-1658, within a period of one week from the date of receipt of a copy of this order before the learned Magistrate.

(iii). Soon after production of the said vehicle, the learned Judicial Magistrate, Aruppukkottai will give interim custody of the vehicle in question to the revision petitioner on execution of a personal bond of a sum of Rs.70,000/- (Rupees Seventy Thousand Only) by the revision petitioner to the satisfaction of the Magistrate concerned.

(iv). The petitioner shall surrender the R.C.Book and the learned Judicial Magistrate is at liberty to return the R.C.Book in case of renewal.

(v). The revision petitioner shall furnish an affidavit of undertaking to the effect that he will cause production of the vehicle in question



before the appropriate / competent authority / Court, as and when called for and further, he will not alienate the vehicle in question till the appropriate proceedings to be initiated / completed.

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(vi). The revision petitioner shall not alter the character and nature of the vehicle, except by carrying on necessary repairs to make the vehicle road worthy.

(vii). Interim custody of the vehicle is subject to the confiscation proceedings initiated against the petitioner, if any

(viii). The said vehicle shall be photographed in different angles on the cost of the revision petitioner and the signature of the petitioner shall be obtained and it shall be kept along with the case records.

(ix). Panchanama is to be prepared at the time of handing over the vehicle to the revision petitioner and it shall be kept in the case records.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Aruppukottai.

2. The Sub-Inspector of Police,
Keelaparalachi Police Station,
Virudhunagar District

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

4. The Record Keeper,
Criminal Section
Madurai Bench of Madras High Court.

+1cc to M/s. R.VENKATESAN in SR. NO. 41665

mpk

MV:JC:SAR1:12/01/2018/4P/6C