

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.575 of 2019

Muthu

..Petitioner/Petitioner/Accused

Vs.

The State represented by its  
Inspector of Police,  
Magudanchavadi Police Station,  
Salem District.

.. Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,  
to set aside the order dated 28.01.2019 passed in C.M.P.No.145  
of 2019 on the file of the Judicial Magistrate-II Court,  
Sankari, Salem District in Crime No.391/2018 of Magudanchavadi  
Police Station, Salem District and to return the vehicle  
(Mahindra Bolero Camper bearing Reg.No.TN-30-BA-9991)to the  
Petitioner for interim Custody.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mrs.P.Kritika Kamal  
Government Advocate  
(Crl. Side)

ORDER

This criminal revision has been preferred seeking to set  
aside the order dated 28.01.2019 passed in C.M.P.No.145 of 2019  
on the file of the Judicial Magistrate-II Court, Sankari, Salem  
District and to return the vehicle (Mahindra Bolero Camper  
bearing Reg.No.TN-30-BA-9991)

2. On the complaint lodged by one Keshav G Shenoy, the  
respondent/police registered a case in Crime No.301 of 2018,  
Magudamchavadi Police Station, on 19.08.2018, under Sections 481  
and 483 IPC and Sections 103 (b) and 104 of the Trade marks Act,  
1999, against three accused.

3. On reading the FIR, it is seen that the three accused were transporting fake Ganesh Bidi bundles in a Mahindra Bolero Camper van, from Thirunelveli to Sankagiri. On coming to know of it, Keshav G Shenoy, distributor of Ganesh Bidi, intercepted the vehicle with the three accused and handed over the contraband, vehicle and the accused to the police, after which, FIR was registered. The police seized the fake Bidis and the vehicle. The vehicle was produced before the jurisdictional Magistrate. The petitioner who is a transport operator and the owner of the vehicle filed CrI.M.P.No.145 of 2019 in Crime No.301 of 2018 before the Judicial Magistrate-II, Sankagiri, under Section 451 Cr.P.C. for return of property, which has been dismissed by the learned Magistrate on 28.01.2019, aggrieved by which, the petitioner is before this Court.

4. Heard Mr.B.Vasudevan, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (CrI. Side) for the respondent/State.

5. Admittedly, the petitioner has not been included as an accused in the case. The accused had hired the vehicle of the petitioner. The contraband and vehicle has been seized by the police and the case is under investigation. The vehicle is now parked in the Magudamchavadi Police Station for want of space in the Court.

6. In *Sunderbhai Ambalal Desai vs. State of Gujarat* [(2002) 10 SCC 290], the Supreme Court has passed detailed orders, with regard to the return of seized vehicles.

7. In view of the above, this criminal revision petition is allowed and the order passed by the Trial Court is set aside. The Trial Court is directed to return the vehicle to the petitioner on the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties each, to the satisfaction of the Judicial Magistrate-II, Sankagiri.

(ii) The learned Magistrate and the police shall make arrangements to take photographs and videographs of the vehicle and prepare a panchanama.

(iii) The panchanama, photographs and videographs can be used as a substantive piece of evidence during trial to show that the goods were transported in the said vehicle.

(iv) The police shall record the statement of the petitioner under Section 161 (3) Cr.P.C. and he shall be included as a

witness. In the statement, the fact that the petitioner has obtained custody of the vehicle by the order of this Court shall be recorded.

(v) A copy of this order shall be filed as part of the final report and copy furnished to the accused under Section 207 Cr.P.C. Then the order shall be marked as a Court exhibit.

(vi) The petitioner shall submit the photocopies of the RC book of the vehicle to the police and to the Court.

In the opinion of this Court, it is unnecessary to mark the vehicle as a material object in the trial and it would suffice if evidence is given on this aspect by Keshav G Shenoy (de facto complainant) and Muthu, the petitioner herein and the Investigating Officer.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate-II,  
Sankari,  
Salem District.
2. The Inspector of Police,  
Magudanchavadi Police Station,  
Salem District.

+1cc to Mr.B.Vasudevan, Advocate SR.No.50550

Cr1.R.C.No.575 of 2019

PM(CO)  
GMY(10/07/2019)

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