

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16205 of 2019

Sundaramoorthy

...Petitioner

Vs.

The State Rep. by,
Sub Inspector of Police,
Vaippar Police Station,
Vaippar,
Thiruvarur District

..Respondent /Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to direct the respondent to return the vehicle bearing Registration No.TN50 AZ 8032 seized in Crime No.12 of 2019 on the file of respondent.

For Petitioner : Mr.Jawahar B

For Respondent : Mr.Mohammed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking for direction to the respondent to return the vehicle which has been seized in Crime No.12 of 2019.

2. The learned counsel for the petitioner submitted that the petitioner is the owner of the vehicle and he has not been shown as an accused in Crime No.12 of 2019. The learned counsel further submitted that the petitioner filed a petition for return of the vehicle before the Court below under Section 451 & 457 of Cr.Pc. The Court below has returned the petition as not maintainable on the ground that already proceedings have been initiated for the confiscation of the vehicle under Section 14 of the Prohibition Act. The learned counsel by relying upon the Judgement of this Court in Crl.OP No.11945 of 2019, dated 06.06.2019 submitted that the Court below was not right in returning back the petition and the Court below ought to have entertained the petition and pass orders in accordance with law.

3. Heard the learned Additional Public Prosecutor appearing on behalf of respondent.

4. As rightly submitted by the learned counsel for the petitioner, the issue is no longer res integra and it is squarely covered by the Judgement of this Court referred supra, the Court cannot return the petition only on the ground that confiscation proceedings have been initiated by the Authority.

5. The relevant portion of the judgement is extracted hereunder :-

11. The provisions of Section 49A of the Tamil Nadu Forest Act does not in any way take away the Jurisdiction of the Magistrate Court to exercise its power under Section 451 or 457 of Cr.PC. The confiscation of a vehicle involved in the commission of an offence under the Tamil Forest Act is not only punitive in nature but also a deterrent. When a vehicle is involved in the commission of offence under the Tamil Nadu Forest Act and there are prima facie materials to show that the owner of the vehicle did not have any knowledge or connivance in the commission of the offence, he can always file an application for return of vehicle under Section 451 or 457 of Cr.PC. But, however the Court while exercising its powers will have to do it with care and caution and should provide an opportunity to the Public Prosecutor and also must keep in mind the spirit behind Section 49A of the Tamil Nadu Forest Act, 1882 and its benevolent object.

12. Even though, the Judgment cited by the learned counsel for the petitioner deals with the case under the Tamil Nadu Prohibition Act, the ratio in the said Judgment can be applied even in a case where confiscation proceedings have been initiated under the Tamil Nadu Forest Act.

13. In view of the above, the reason given by the Court below for returning the petition filed by the petitioner is unsustainable and the same is hereby set aside. The Court below is directed to consider the petition afresh by keeping in mind the Judgment of the Hon'ble Division Bench referred supra and after affording an opportunity to the prosecution. This exercise shall be completed by the Court below within a period of one month from the date of a receipt of copy of this order.

6. In view of the above, there shall be a direction to the learned Judicial Magistrate, Thiruvarur to entertain the petition filed by the petitioner and deal with the same in accordance with the judgement which has been referred supra and pass necessary orders within a period of three weeks from the date of receipt of copy of this order.

7. In the result, this Criminal Original petition is disposed of with the above directions.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

rka/msrm

To

1. The State Rep. by,
Sub Inspector of Police,
Vaippur Police Station,
Vaippur,
Thiruvarur District

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Jawahar, Advocate, S.R.No.52640

Cr1.O.P.No.16205 of 2019

PM(CO)

RRS (27/06/2019)

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