

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.11.2019

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1113 of 2019

Sundaramoorthy

.. Petitioner

Vs

State rep by
The Sub Inspector of Police,
Vaippar Police station, Vaippar,
Tiruvarur District.
(Crime No.12/2019)

.. Respondent

Prayer:- This Criminal Revision Petition is filed, under section 397 read with 401 of Cr.P.C., to call for records relating to the order dated 08.07.2019, passed in Crl.M.P.No.2845/2019, by the learned Judicial Magistrate, Tiruvarur.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

1. This Criminal Revision Petition has been filed by the petitioner/accused, seeking to call for records relating to the order dated 08.07.2019, passed in Crl.M.P.No.2845/2019, by the learned Judicial Magistrate, Tiruvarur, dismissing the said petition for return of property.
2. The brief facts of the case is that the respondent police finding one Aravind and two others, transporting illicit liquor in a red colour Swift Car, bearing registration No.TN50 AZ 8032 had registered the case in Crime No.12/2019, for the offence under Section 4(1) (aa) of the Tamil Nadu Prohibition Act, on 15.01.2019 and the car was seized and was produced before the Trial Court. The petitioner being the third party/owner of the vehicle had filed a petition, seeking for return of property, under Section 457 of Cr.P.C. The Trial Court, finding that the confiscation proceedings has been initiated by the appropriate authority and that notice had served on the owner of the vehicle on 23.01.2019 itself has dismissed the petition, directing the petitioner to seek remedy

under Section 14(5) of the TNP Act. As against the same, the present criminal revision petition has been filed.

3. The learned counsel for the petitioner would submit that the petitioner is the owner of the vehicle and that he is not an accused. He would submit that his friend's son one Aravind had borrowed his vehicle and that without his knowledge, the said Aravind had used the vehicle for illicit purpose and that the petitioner being the owner of the vehicle and not being an accused had filed the petition, seeking for return of vehicle. In the petition, he had also given an undertaking to produce the vehicle before the Trial Court or Investigating Agency as and when required however, the Trial Court contending that the confiscation proceedings have been initiated had dismissed the petition. He would further submit that the petitioner is put to difficulty since, the said vehicle is exposed to open space and thereby, the value of the vehicle is getting diminished and that the pendency of the confiscation proceedings under the Prohibition Act is not a bar for returning the vehicle by the criminal Court. In support of his contention, he would rely on the judgment reported in 2012 Cri L J 461 [Sakthidevi v. State].
4. The respondent had filed a counter, wherein it had been stated that the vehicle had been used by the accused for illegal transport of liquor and that the vehicle was intercepted and the accused found to transport illegal liquor in huge quantities and that the vehicle has been seized and would submit that the case is under investigation and that appropriate authority has initiated proceedings for confiscation of the vehicle and notice has also been served on the owner of the vehicle on 23.01.2019 itself however, the final order regarding confiscation of vehicle has not been passed. The Trial Court finding that confiscation proceedings are pending has dismissed the petition.
5. Heard the learned counsel for the petitioner and the Learned Additional Public Prosecutor, appearing for the respondent and perused the materials placed on record.
6. In this case, the petitioner is a third party/owner of the vehicle and that he is not an accused in this case. Though, notice has been served in respect of the confiscation proceedings as on date, no order confiscating the vehicle had been passed. This Court, in 2012 Cri L J 461 [Sakthidevi v. State] has held that pendency of confiscation proceedings is not a bar for return of vehicle.
7. In the opinion of this Court, there is no purpose in keeping the vehicle idle in the respondent police, which will result in the value of the vehicle getting

deteriorated. The petitioner has stated that he is prepared to give an undertaking that he will not dispose the vehicle and that he will produce the vehicle before the Trial Court as and when required by the Trial Court. Further, he has also undertaken to deposit the R.C.Book in to the Court.

8. In view of the above, the criminal revision petition is allowed and the order passed by the Trial Court dated 08.07.2019, passed in CrI.M.P.No.2845/2019, by the learned Judicial Magistrate, Tiruvarur, is hereby set aside and the learned Magistrate is directed to handover the interim custody of the vehicle, bearing registration number TN50 AZ 8032 to the petitioner, subject to the following conditions:

a. The petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) with two sureties for the like sum to the satisfaction of the learned Judicial Magistrate, Thiruvarur.

b. The petitioner shall file an affidavit of undertaking submitting not to alter the vehicle or change the physical features of the vehicle and also given an undertaking to produce the vehicle as and when required by the Trial Court or the Investigating Agency.

c. The original R.C.Book of the vehicle will be produced before the Trial Court and it will be retained by the Trial Court, until further orders.

d. The petitioner shall appear before the concerned authorities in respect of proceedings initiated for confiscation of vehicle of the TNP Act.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1. The Judicial Magistrate, Tiruvarur.
2. The Sub Inspector of Police, Vaippar Police station, Vaippar, Tiruvarur District.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.B.Jawahar , Advocate SR.No. 91240

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