



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 29.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C.[MD]No.773 of 2019

and

CRL.M.P.[MD]No.8886 of 2019

S.Muthali

.. Petitioner

- Vs -

1.The Additional Superintendent of Police,
PEW, Virudhunagar.

2.The Deputy Superintendent of Police,
Srivilliputhur Division,
PEW incharge,
Virudhunagar.

3.The Sub Inspector of Police,
Koomapatti Police Station,
Virudhunagar,
(Crime No.109 of 2015).

.. Respondents

PRAYER: Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records relating to the judgment dated 02.07.2019 made in C.A.No.106 of 2015 on the file of Hon'ble Principal District Judge, Srivilliputhur and the order passed by the Additional Deputy Superintendent of Police, PEW, Virudhunagar dated 31.10.2015 in Na.Ka.No.1-2/A.D.S.P/P.E.W/VNR/2015 pending disposal of this revision.

For Petitioner : Mr.S.Premkumar

For Respondents : M/s.M.Anantha Devi, GA (Crl. Side)

ORDER

This revision petition is preferred against the order 02.07.2019 made in C.A.No.106 of 2015, on the file of Hon'ble Principal District Judge, Srivilliputhur, dismissing the petition filed by the petitioner u/s 451 Cr.P.C. for return of the vehicle.



2.It is represented by the learned Counsel for the petitioner that the Auto bearing Registration No.TN 67 AX 9807 was seized by the respondent police as it was carrying 48 bottles of Brandy illegally. The vehicle was seized and a case in Crime No.109 of 2015 was taken on file for the offences punishable under Section 4 (1) (a) of Tamil Nadu Prohibition Act, 1937. After registration of the case in the above said crime number, proceedings were initiated and explanation was called for by proceedings dated 23.09.2015.

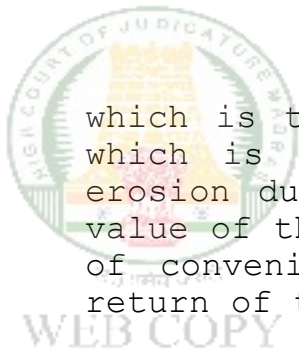
3.According to the learned Counsel for the petitioner, the petitioner herein is the owner of the vehicle which was involved in the illegal transport of the liquor bottles and it is only the driver who used to take the auto for short periods on rent had committed the offence. Learned Counsel would also submit that the charge sheet did not figure the name of the petitioner. This fact is acknowledged by the learned Government Advocate (Crl. Side) appearing for the respondents. Learned Counsel for the petitioner further submits that for the past four years, the vehicle stands under the custody of the first respondent police.

4.Per contra, learned Government Advocate (Crl. Side) vehemently opposed the petition submitting that pending trial, if the vehicle is directed to be released to the petitioner, the petitioner may alienate the vehicle and, thereby, the said act would be very detrimental to the prosecution case, which fact has been considered by the court below and, therefore, no interference is called for with the said order. It is also further contended that the order, passed u/s 451 Cr.P.C. is an interlocutory order and in view of the bar u/s 397 (2) Cr.P.C., the revision is not maintainable.

5.This Court bestowed its best attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

6.The bar imposed u/s 397 (2) Cr.P.C. against filing of revision against an interlocutory order is no longer *res integra* in view of the decision of this Court in the case of **V.Vinoth - Vs - The State (Crl. R.C. No.1152/2018 dated 17.12.2018)**, wherein this Court has extensively considered the said argument and held that revision is maintainable against the order passed u/s 451 Cr.P.C., as the same is not interlocutory in nature, but such order determines the constitutional rights of the petitioner for return of properties or for disposing of properties.

7.A perusal of the order passed by the court below reveals that based on the apprehensions expressed by the respondents herein, the court below had dismissed the plea for return of the vehicle. It is to be borne in mind that the movable property, viz., the vehicle,



which is the subject matter of release, is kept in an open place, which is not in dispute. So definitely, there is bound to be erosion due to natural factors, thereby increasing the depreciable value of the vehicle. Therefore, in the above scenario, the balance of convenience definitely tilts in favour of the petitioner for return of the vehicle.

8.This Court, taking cue from the observations made by the Hon'ble Supreme Court in a catena of decisions, and also keeping in mind the fact that the property, which is sought to be returned will lose its value and ultimately would be of no use to any stake holder and keeping the property in the custody of the respondent police, in all fairness and fitness of things, pending trial or investigation, the vehicle, as far as possible, shall be returned to the owner. Therefore, this Court is of the considered view, that the vehicle in the present case, bearing Regn. No.TN-67-AX-9807, which is the subject matter of impugned order dated 02.07.2019, made in C.A.No.106 of 2015 on the file of the Principal District Judge, Srivilliputhur, should be released.

9.Accordingly, this criminal revision case is allowed setting aside the order dated 02.07.2019, made in C.A.No.106 of 2015 on the file of the Principal District Judge, Srivilliputhur. The vehicle, bearing Regn. No.TN-67-AX-9807, which is covered under C.A.No.106 of 2015, on the file of the Principal District Judge, Srivilliputhur, is ordered to be released within a period of one week from the date of receipt of a copy of this order, subject to the following conditions :-

"i) The petitioner shall produce necessary documents before the respondent to establish ownership of the vehicle in question;

ii) The petitioner shall deposit the RC Book in the custody of the Principal District Judge, Srivilliputhur, till the conclusion of the trial;

iii) The petitioner shall deposit a sum of Rs.5,000/- (Rupees Five Thousand only) before the Principal District Judge, Srivilliputhur, as non-refundable deposit;

iii) The petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future and shall produce the same as and when required by the respondent for the conduct of the trial;

iv) The petitioner shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned;

v) The petitioner shall not alter the physical characteristics of the vehicle and shall maintain the vehicle in as is where is condition till the disposal



of the proceedings before the authority concerned;
and

vi) The petitioner shall extend full cooperation by
producing the vehicle as and when required at the
time of trial."

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

MR

To

- 1.The Principal District Judge,
Srivilliputhur.
- 2.The Additional Superintendent of Police,
PEW, Virudhunagar.
- 3.The Deputy Superintendent of Police,
Srivilliputhur Division,
PEW incharge, Virudhunagar.
- 4.The Sub Inspector of Police,
Koomapatti Police Station,
Virudhunagar.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.PREAM KUMAR, Advocate (SR-102881[F] dated 02/12/2019

ORDER MADE IN
CRL. R.C.[MD]No.773 of 2019
29.11.2019

JMN(05.12.2019) 4P : 7C