

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.RC.No.273 of 2020

K.Mohammed Niyas

... Petitioner

Vs.

State represented by
The Inspector of Police
Prohibition and Enforcement Wing
Chennai 600 016.

.... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C, to set aside the order passed in C.M.P.No.37 of 2020 in Cr.No.680 of 2019 dated 31.01.2020 passed by the learned Judicial Magistrate No.II, Tambaram and direct the Inspector of Police, Prohibition and Enforcement Wing, St. Thomas Mount, Chennai 600 016 to produce the Omni Bus Ashok Leyland named Fareena Travels with Registration No.TN-49-AP-0839 detained by him in Crime No.680 of 2019 before the Judicial Magistrate No.II, Tambaram.

For Petitioner : Mr.Raj Kumar Paul

For Respondent : Mr.T.Shunmuga Rajeswaran
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed against the dismissal of the petition filed by the petitioner in Crl.M.P.No.37 of 2020 dated 31.01.2020 on the file of the learned Judicial Magistrate No.II, Tambaram.

2. The case of the prosecution is that on 11.09.2019 at about 6.00 am., at GST Road, Tambaram, near MEPZ Signal, some persons have shifted certain brown colour card boxes from the bus bearing Registration No.TN-49-AP-0839 to a Maruthi Swift Car bearing Registration No.TN-05-BC-2337 and on information, the respondent police went there and seized the said boxes and on checking, it was found that liquor bottles were there and hence,

the respondent has arrested three accused persons and also seized the aforesaid liquor bottles and vehicles and brought to the Police Station and registered a case in Cr.No.680/2019 under Section 4 (1) (aaa) and Section 4 (1-A) of Tamil Nadu Prohibition Act r/w Rules 6 & 11 of TN R.S Rules 2000 (Transporting).

3. The petitioner herein has filed a petition under Section 451 of Cr.P.C., in CrI.M.P.No.37 of 2020 on the file of the Judicial Magistrate No.II, Tambaram seeking interim custody of the bus bearing Registration No.TN-AP-0839. The learned Judicial Magistrate No.II, Tambaram has dismissed the said petition by the order dated 31.01.2020. Challenging the said order, the petitioner has filed the present Criminal Revision case.

4. The learned counsel for the petitioner has submitted that the petitioner is the owner of the aforesaid bus and he is a native of Keelakarai Ramanathapuram District. He further submitted that the petitioner did not know about what had happened on the particular date. He further submitted that even assuming that some liquor bottles were transported in the petitioner's bus, for that the petitioner cannot be held liable and the petitioner's vehicle also cannot be seized. He further submitted that the petitioner is not connected with the aforesaid crime. He further submitted that if the vehicle is exposed to sun and rain resulting in the deterioration of its condition and therefore, he prayed to set aside the order passed by the learned Judicial Magistrate No.II, Tambaram and grant interim custody of the said vehicle to the petitioner.

5. In support of his contention, he relied upon the following decision in Raja Vs. State Rep. by Inspector of Police, Prohibition and Enforcement Wing (PEW PS), Pattukottai in CrI.R.C.(MD) No.564 of 2015.

6. Per contra, the learned Government Advocate (CrI.Side) after getting instructions from the Sub-Inspector of Police, who appeared in person before this Court, has submitted that since the liquor bottles were transported in the petitioner's bus, as per Section 14 of the Tamil Nadu Prohibition Act, the said vehicle can be confiscated and as per Section 14-A of the Tamil Nadu Prohibition Act, the petitioner also can be prosecuted. He further submitted that already the Assistant Commissioner of Police, Prohibition and Enforcement Wing, Chennai has taken steps for confiscating the petitioner's bus and also issued notice on 01.11.2019 itself. He further submitted that after receipt of the said notice, the owner of the vehicle/petitioner

herein, has appeared in person before the Assistant Commissioner of Police, Prohibition and Enforcement Wing, Chennai and submitted his oral explanation.

7. He further submitted that in order to give one more opportunity to the petitioner, the Assistant Commissioner of Police, Prohibition and Enforcement Wing, Chennai has decided to send another notice tomorrow. He further submitted that since already confiscation proceedings were initiated, if the vehicle is returned to the petitioner, it would affect the confiscation proceedings. He further submitted that the petitioner may use the said vehicle for committing the same kind of offence and therefore, he prayed to dismiss the petition.

8. The respondent also has filed a counter opposing this Criminal Revision Case.

9. In Raja Vs. State Rep. by Inspector of Police, Prohibition and Enforcement Wing (PEW PS), Pattukottai (cited supra) this Court after referring to the earlier decision of this Court has held in para No.22 as follows:-

"22. In the upshot of detailed qualitative and quantitative discussions and also this Court, taking note of the entire attentive facts and circumstances of the present case, is of the considered view that the reasons ascribed for dismissal of the miscellaneous petition by the trial Court in Cr.M.P.No.6161 of 2015 to the effect that the four wheeler vehicle TATA ACE bearing Regn.No. N 31 AW 2399 was not produced before the Court and also that the confiscation proceedings were to be initiated by the Additional Superintendent of Police and therefore, the vehicle could not be ordered to be returned are clearly unsustainable in the eye of Law. Viewed in that perspective, this Court, unhesitatingly, holds the trial Court has committed an error in dismissing the Cr.M.P.No.6161 of 2015. As such, this Court, to prevent an aberration of justice, interferes with the said impugned order of dismissal dated 21.11.2015, passed in Cr.M.P.No.6161 of 2015, by the trial court and sets aside the same, to promote the substantial cause of justice. Resultantly, the Criminal Revision Petition filed by the petitioner succeeds."

10. From the aforesaid decision, it is clear that the pendency of the confiscation proceedings will not stand in the way of returning the vehicle for interim custody.

11. In this case, the respondent has seized the petitioner's bus bearing Registration No.TN-49-AP-0839 on 11.09.2019 itself and he has not initiated any confiscation proceedings immediately. On the contrary, the Assistant Commissioner of Police, Prohibition and Enforcement Wing, Chennai has issued notice to the petitioner only on 01.11.2019. Further eventhough in the said notice it was stated that if the petitioner failed to submit his explanation within 15 days from the receipt of the said show cause-notice, further proceedings will be taken, sofar the confiscation has not been ordered.

12. Further, as per the submission of the learned Government Advocate (criminal side) the Assistant Commissioner of Police, Prohibition and Enforcement Wing, Chennai has decided to issue another show cause notice tomorrow, which shows that the Assistant Commissioner of Police, Prohibition and Enforcement Wing, Chennai has not taken any effective steps for confiscating the vehicle. He may take further time for completing the proceedings. Under the said circumstances, this Court is of the view that if the vehicle is exposed to sun and rain, it will result in the deterioration of the vehicle and therefore, the said vehicle shall be handed over to the petitioner for interim custody.

13. In the result, this Criminal Revision Petition is allowed. The order passed by learned Judicial Magistrate No.II, Tambaram in Crl.M.P.37 of 2020 is set aside and the learned Judicial Magistrate No.II, Tambaram is directed to return the aforesaid vehicle to the petitioner for interim custody with the following conditions:

- (i) The petitioner shall execute a bond for Rs.1,00,000/- with one surety for like sum.
- (ii) The petitioner shall produce the original RC book before the trial court.
- (iii) The petitioner shall not alienate or hypothecate the said vehicle without getting permission from the trial court.
- (iv) As and when required, the petitioner shall produce the said vehicle before the trial court.

14. It is made it clear that granting of interim custody of the vehicle to the petitioner will not stand in the way of confiscation proceedings. It is open to the concerned authorities to proceed further in accordance with law.

15. If the confiscation is ordered, the respondent can send a notice to the petitioner to produce the vehicle and on receipt of the said notice, the petitioner has to produce the said vehicle before the concerned Authorities.

Sd/-
Asst.Registrar (CS I)

/true copy/
Sub Asst. Registrar

To

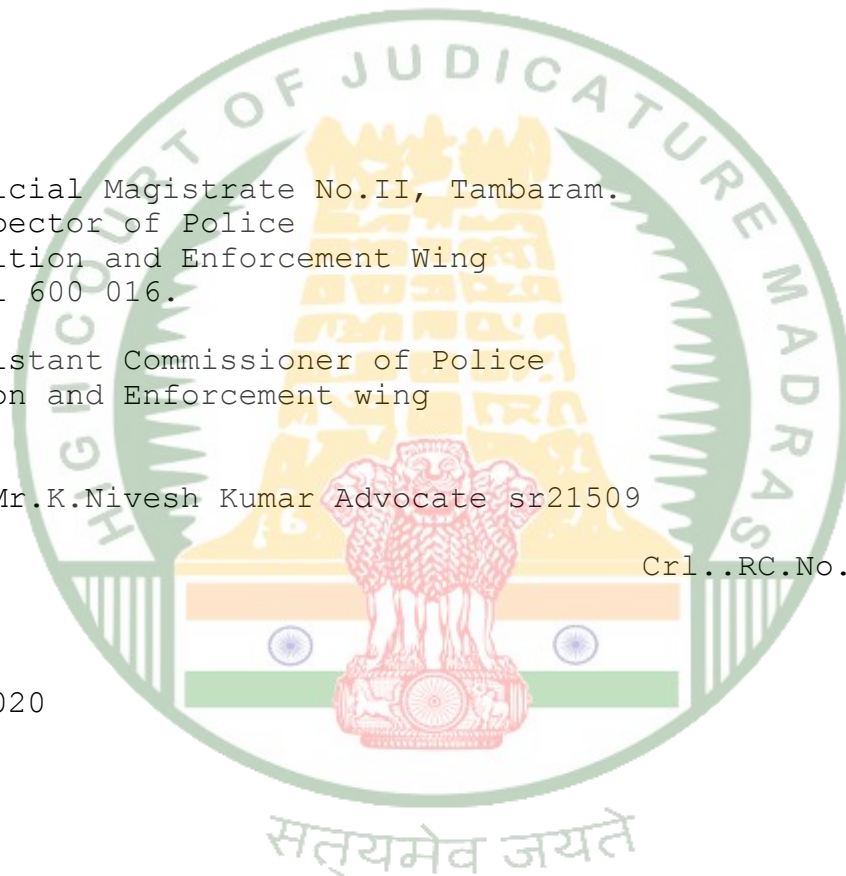
1.The Judicial Magistrate No.II, Tambaram.
2.The Inspector of Police
Prohibition and Enforcement Wing
Chennai 600 016.

3.The Assistant Commissioner of Police
Prohibition and Enforcement wing
Chennai

+1 cc to Mr.K.Nivesh Kumar Advocate sr21509

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