

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.812 of 2020

Arun

...Petitioner

Vs.

The State rep by its,
The Inspector of Police,
Vellavedu Police Station,
Tiruvallur District.

...Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the Judicial Magistrate II Poonamallee in C.M.P.No.822 of 2020, order dated 07.09.2020 by allowing this Criminal Revision Petition to grant interim custody to the petitioner of his vehicle bearing No.TN 04 AP 5124 (Mahindra XUV), Engine Number HJF4A 11814, Chassis Number MA1YT2HJUF6A12591 in seized Crime No.1514 of 2020.

For Petitioner : Mr.R.Thirumoorthy
For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor.

ORDER

The petitioner, who is the owner of the vehicle viz., Mahindra XUV, bearing registration number TN 04 AP 5124, filed a petition in C.M.P.No.822 of 2020 for return of vehicle, which was seized in connection with Crime No.1514 of 2020. The learned Judicial Magistrate No.II, Poonamallee, by order dated 07.09.2020, dismissed the petition, against which the petitioner before this Court.

2.The case of the prosecution is that on 16.06.2020, at about 09.00 a.m., the Special Sub Inspector of Police attached to the respondent Police Station along with his team conducted road check near Thirumazhisai. At that time, the vehicle/car bearing registration number TN 04 AP 5124 was signalled to stop, but the driver did not stop the vehicle and the Police chased the vehicle and stopped it. When the Police questioned the driver, he disclosed his identify as Santhosh, residing at Indira Nagar, Koodapakkam, Thiruvallur District. When his bag was searched, it was found that 65 bottles of cordinal brandy

were found. When the same was questioned, the driver Santhosh confessed that he was transporting the bottles for selling at higher price for gain. The driver Santhosh was arrested and the brandy bottles were seized and the car was also taken into custody by the respondent Police. Thereafter, the respondent Police registered an FIR in Crime No.1514 of 2020, for offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937.

3.The learned counsel for the petitioner submitted that the petitioner is the owner of the vehicle viz., Mahindra XUV, bearing registration number TN 04 AP 5124, Engine Number HJF4A 11814 and Chassis Number MA1YT2HJUF6A12591 and one Santhosh is a Driver. The driver Santhosh misused the vehicle of the petitioner, without his knowledge. On coming to know about the seizure of the vehicle by the respondent Police, the petitioner filed a petition under Section 451 r/w 457 Cr.P.C on 11.07.2020, before the learned Principal District and Sessions Judge, Thiruvallur, which was returned. Thereafter, the petitioner filed Crl.O.P.No.10952 of 2020 before this Court and this Court by order dated 23.07.2020, permitted the petitioner to file a fresh petition for return of vehicle. The petitioner filed Crl.M.P.No.822 of 2020 before the learned Judicial Magistrate No.II, Poonamallee, on the ground that the petitioner was need of his vehicle for daily use. In support of the ownership of the vehicle, the petitioner produced relevant documents along with affidavit. Since the Assistant Public Prosecutor filed his objection that the investigation is yet to be completed and no Court has power to return the property as interim custody and the confiscation proceedings was initiated, the learned Judicial Magistrate No.II, Poonamallee, dismissed the petition, citing the guidelines issued in the case of "David V. Shakthivel, Inspector of Police-cum-Station House Officer, dated 08.01.2010 in Contempt Petition No.1156 of 2020."

4.The learned counsel for the petitioner further submitted that in the case of "Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station, Nagapattinam District in Crl.R.C.No.501 of 2011", this Court considering the case of David (Cited Supra), had given a finding to the effect that mere pendency of the confiscation proceedings, is not a bar for granting the relief of interim custody of the vehicle and ordered return of vehicle. This case has been followed by this Court in the case of "C.Srinivasan Versus State rep. by, The Inspector of Police, Manikandam Police Station, Trichy District in Crl.R.C.(MD)No.75 of 2019 and in the case of Sundaramoorthy Versus State rep by The Sub Inspector of Police, Vaippar Police Station, Vaippar Tiruvarur District in Crl.R.C.No.1113 of 2015". Hence, it was submitted that it is a consistent view of this Court to grant interim custody of the vehicle to the owner, who is not an accused.

5. Recently this Court in the case of "B.Sathish Kumar Versus State rep. by Inspector of Police, Anaicut Police Station, Kancheepuram in CrI.R.C.No.648 of 2019, by order dated 13.08.2019", ordered return of vehicle to the owner. Thus, this Court in the cases of vehicles involved in prohibition offences, ordered return of vehicle to the owner. Hence, he prayed that the petitioner to be entrusted with the interim custody of the vehicle. Further, the vehicle of the petitioner is exposed in open space to vagaries of weather and thereby, the value of the vehicle is getting diminished. Further, he placed reliance on the citation of the Hon'ble Apex Court in the case of "Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290", wherein guidelines were issued in the cases of return of property to the owner.

6. The learned Additional Public Prosecutor appearing for the respondent submitted that the confiscation proceedings already initiated by the Prohibition Officer. He further submitted that the petitioner was evading the receipt of notice in the confiscation proceedings. Suppressing the same, the petitioner filed the above petition. The initiation of the confiscation proceedings is reflected in the FIR in Crime No.1514 of 2020 as well in the order of the lower Court. The petitioner had knowingly allowed his vehicle to be used by his driver Santhosh to illegally transport the cardinal brandy bottles for gain. The learned Additional Public Prosecutor apprehends that if the vehicle is returned to the petitioner, he would continue to indulge in such activities. Therefore, a show cause notice for the confiscation proceedings, was issued to the petitioner on 06.10.2020. On receipt of the same, the petitioner filed objections. It would be appropriate to await the outcome of the confiscation proceedings.

7. This Court considered the rival submissions and perused the materials available on record.

8. It is not in dispute that the petitioner is the owner of the vehicle viz., Mahindra XUV, bearing registration number TN 04 AP 5124, Engine Number HJF4A 11814 and Chassis Number MA1YT2HJUF6A12591 and he is not an accused in Crime No.1514 of 2020. It is seen that from 16.06.2020, the vehicle is kept in open space and thereby, the value of the vehicle is getting diminished. The Hon'ble Apex Court in the case of "Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290", had given guidelines in the cases of return of property to the owner.

9. Further, this Court in the case of "Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station,

Nagapattinam District in Crl.R.C.No.501 of 2011", considered the case of "David Vs. Sakthivel, Inspector of Police-cum-Station House Officer reported in 2010 1 MLJ (Crl.) 929" and ordered return of seized vehicle to the owner, which is being consistently followed, despite initiation of the confiscation proceedings.

10.In view of the aforesaid reasons, this court is constrained to set aside the order passed by the learned Judicial Magistrate No.II, Poonamallee made in C.M.P.No.822 of 2020, dated 07.09.2020 and the criminal revision is allowed.

11.The learned Judicial Magistrate No.II, Poonamallee is directed to return the vehicle, viz., Mahindra XUV, bearing registration number TN 04 AP 5124, on the following conditions:-

(i) The petitioner shall produce the original RC Book and other relevant records to prove his ownership and the learned Magistrate, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the revision petitioner with a view to use the vehicle;

(ii) The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over;

(iii) The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees two lakhs only) to the satisfaction of the learned Judicial Magistrate No.II, Poonamallee;

(iv) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the court below and as well as by the District Collector of the District or authorized officer in that behalf by the Government.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Poonamallee.

2. -do- The Chief Judicial Magistrate,
Tiruvallur.

3. The Inspector of Police,
Vellavedu Police Station,
Tiruvallur District.

4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Thirumoorthy, Advocate in Sr.34174

Cr1.R.C.No.812 of 2020

RP(CO)
RV(05/11/2020)