

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM:

THE HONOURABLE Mr JUSTICE P.N.PRAKASH

Crl.R.C.No.807 of 2020

Arulsree Mozhi

..

Petitioner/
owner of the vehicle

Vs.

State represented by
The Inspector of Police,
PEW, Mamallapuram.
(Crime No.373 of 2020)

.. Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 25.08.2020 passed in Crl.M.P.No.3105 of 2020 on the file of the Judicial Magistrate Court No.I, Chengalpattu and to return the vehicle (Mahindra Xylo Car) bearing Registration No.TN-06-V-3073 to the petitioner.

For Petitioner : Mr.D.Saravanan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

O R D E R

This case is taken up through video conferencing.

2. This criminal revision has been filed seeking to set aside the order dated 25.08.2020 passed in Crl.M.P.No.3105 of 2020 on the file of the Judicial Magistrate Court No.I, Chengalpattu and to return the vehicle (Mahindra Xylo Car) bearing Registration No.TN-06-V-3073 to the petitioner.

3. On 25.07.2020, the respondent/police intercepted a vehicle (Mahindra Xylo Car) bearing Registration No.TN-06-V-3073 near Alathur bus stop and seized a huge haul of foreign made Indian liquor. The driver of the vehicle Vinod was arrested and a case in Crime No.373 of 2020 for the offence under Section 4 (1)(a) of the Tamil Nadu Prohibition Act,1937, (for brevity "the TNP Act"), was registered against him. The vehicle was also seized by the police.

4. The petitioner, being the owner of the vehicle, filed a petition in Crl.M.P.No.3105 of 2020 under Section 451 r/w 457 Cr.P.C. before the Judicial Magistrate Court No.I, Chengalpattu, for interim custody of the vehicle. The Magistrate, by order dated 25.08.2020, dismissed the petition, on the ground that, the police informed him that steps are being taken for confiscation of the vehicle, aggrieved by which, the present revision petition has been filed.

5. Heard Mr.D.Saravanan, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent/State.

6. The learned counsel for the petitioner submitted that the said vehicle is a yellow board tourist car, which was driven by the petitioner's driver Vinod, who transported the contraband without the knowledge of the petitioner. He further submitted that the petitioner has purchased the vehicle by hire purchase and the vehicle was the petitioner's only source of livelihood. It is his further submission that the petitioner has not even able to pay the dues to the financier for the last four months.

7. On instructions, Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) submitted that the vehicle has been handed over to the Additional Superintendent of Police, PEW, Kancheepuram, for initiating confiscation proceedings, but, on account of COVID-19 pandemic situation, he was unable to begin the exercise.

8. This Court gave its anxious consideration to the rival submissions.

9. In David Vs. Sakthivel¹, the Division Bench of this Court has laid down the law in this regard. In this case, the petitioner has not been arrayed as an accused. The petitioner is a lady, who seems to have bought the vehicle in hire purchase for her business and had engaged the accused as the driver. The confession statement of the accused also does not implicate the petitioner. The Adjudicating Authority, under Section 14 of the TNP Act, has not yet commenced the adjudication proceedings, on account of COVID-19 pandemic situation.

10. In view of the aforesaid circumstances, instead of allowing the vehicle to remain open to sun and rain, interests of justice will be served, if the interim custody of the vehicle is granted to the petitioner subject to the outcome of the confiscation proceedings under Section 14 of the TNP Act.

1 2010 (1) Law Weekly Crl. 129

11. In the result, this revision petition is allowed by setting aside the order dated 25.08.2020 passed in CrI.M.P.No.3105 of 2020 on the file of the Judicial Magistrate Court No.I, Chengalpattu and the interim custody of the vehicle is granted to the petitioner with the following conditions:

(i) The petitioner shall deposit a sum of Rs.1,00,000/- before the Judicial Magistrate Court No.I, Chengalpattu, to the credit of Crime No.373 of 2020;

(ii) On such deposit, the Judicial Magistrate No.I, Chengalpattu, shall re-deposit the sum of Rs.1,00,000/- in a fixed deposit account in any nationalized bank, so that the amount earns interest;

(iii) Thereafter, the petitioner shall execute a bond for a sum of Rs.25,000/- with two sureties each, for a like sum to the satisfaction of the Judicial Magistrate No.I, Chengalpattu, undertaking that she will not alienate the vehicle in question till the disposal of the proceedings before the authority concerned and produce the same as and when required by the authorities for confiscation proceedings;

(iv) The petitioner and the sureties shall affix their photographs and give the copies of their Aadhaar Card;

(v) The petitioner shall also give an undertaking that she will give evidence as a witness in this case with regard to the interim custody of the vehicle obtained by her pursuant to the order of this Court;

- (vi) The petitioner shall take photograph of the vehicle and submit the same along with Compact Disc duly certified under Section 65-B of the Indian Evidence Act, 1872;
- (vii) The petitioner shall submit a photocopy of the R.C. Book of the vehicle before the Additional Superintendent of Police, PEW, Kancheepuram;
- (viii) The petitioner shall participate in the) adjudication proceedings before the Additional Superintendent of Police, PEW, Kancheepuram;
- (ix) In the event of confiscation orders being passed and confirmed in the appeal by the Court of Session, the sum of Rs.1,00,000/- with accrued interest deposited by the petitioner shall be confiscated to the State; if no order of confiscation is passed, the petitioner will be entitled to the return of the amount with accrued interest; and
- (x) On fulfilling the above conditions, the respondent/Police, the Judicial Magistrate No.I, Chengalpattu and the Additional Superintendent of Police, PEW, Kancheepuram, shall hand over the interim custody of the vehicle to the petitioner.

सत्यमेव जयते
-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

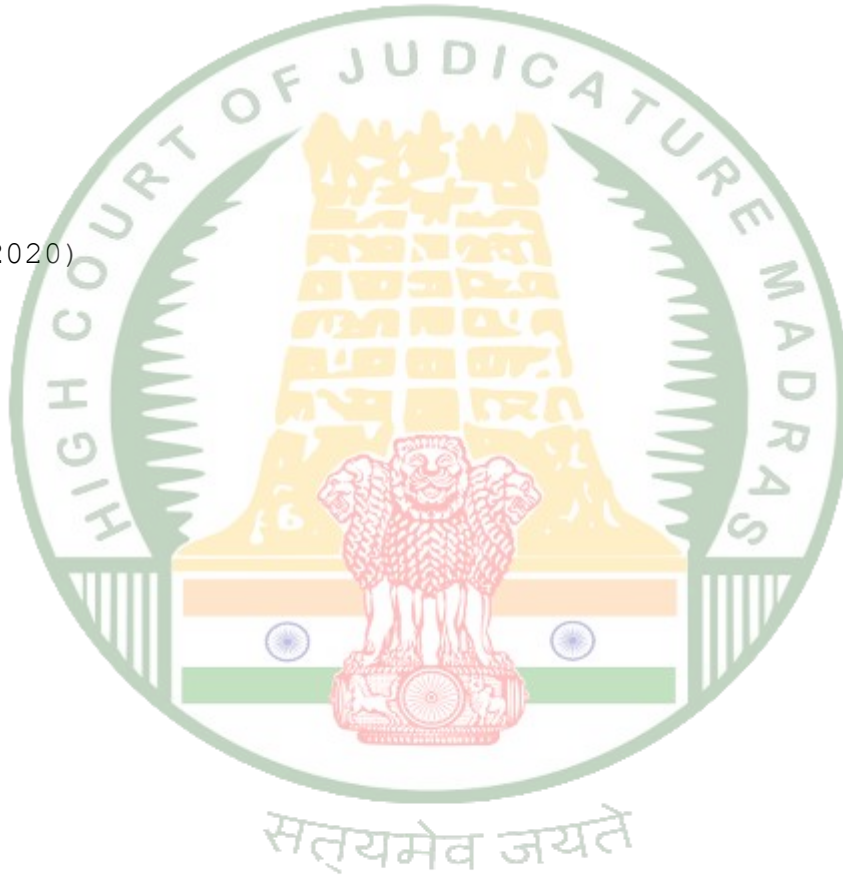
Nsd
To

1. The Judicial Magistrate No.I,
Chengalpattu.

2. The Additional Superintendent of Police,
PEW, Kancheepuram.
3. The Inspector of Police,
PEW Mamallapuram.
4. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

Cr1.R.C.No.807 of 2020

SAI (CO)
SP(28/10/2020)



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