

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.881 of 2020

Nandhakumar

... Petitioner

Vs.

The State rep by its,
The Inspector of Police,
P.W.E Chengalpattu Police Station,
Chengalpattu District.
(Crime No.221 of 2020)

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 05.08.2020 made in CrI.M.P.No.3084 of 2020 on the file of the Judicial Magistrate II, Chengalpattu, Chengalpattu District, dismissing the petition to return the two wheeler TVS Apache motorcycle bearing Registration No.TN 19 AM 1293 to the petitioner.

For Petitioner : Mr.R.Sasikumar

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

ORDER

The petitioner, who is the owner of the vehicle viz., TVS Apache, bearing registration number No.TN 19 AM 1293, filed a petition in C.M.P.No.3084 of 2020 for return of vehicle, which was seized in connection with Crime No.221 of 2020. The learned Judicial Magistrate No.II, Chengalpattu, by order dated 05.08.2020, dismissed the petition, against which the petitioner before this Court.

2. The case of the prosecution is that on 27.04.2020, when the respondent Police conducting routine road check of vehicles on Chengalpattu to Thirumani Road, they intercepted the two wheeler TVS Apache Motorcycle bearing Registration No. TN 19 AM 1293. On seeing the respondent Police the rider of the vehicle and other two persons tried to escape. The Police chased and stopped them. When the Police questioned them, they disclosed

their identity as Selvam, residing at M.G.R Nagar, Chengalpattu; Dheenadhayalan, residing at No.142, Ambedkar Street, Kelambakkam, Chengalpattu District; Dinakaran, residing at Indira Gandhi Street, Indira Nagar, Chengalpattu District. On search, they were found with 10 litters of ID Arrack. When the same was questioned, they confessed that they were transporting the ID Arrack for gain. Therefore, they were arrested and the can consisting ID Arrack was seized and the two wheeler was also taken into custody by the respondent Police. Thereafter, the respondent Police registered an FIR in Crime No.221 of 2020, for offence under Section 4(1)(a), 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., TVS Apache, bearing registration number TN 19 AM 1293, Engine Number CE7HK2600544 and Chassis Number MD637CE79K2H00571. The rider of the motor bike Selvam 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., in C.M.P.No.3084 of 2020 before the learned Judicial Magistrate No.II, Chengalpattu, on the ground that the petitioner was need of his motor bike 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, Chengalpattu, dismissed the petition.

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 Cr1.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 Cr1.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 Cr1.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 Crl.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. Suppressing the same, the petitioner filed the above petition. The initiation of confiscation proceedings is reflected in the order of the lower Court. The petitioner had knowingly allowed his vehicle to be used by his friend Selvam to illegally transport the alcohol 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. 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., TVS Apache, bearing registration number TN 19 AM 1293, Engine Number CE7HL2600544 and Chassis Number MD637CE79K2H00571 and he is not an accused in Crime No.221 of 2020. It is seen that from 27.04.2020, the vehicle is kept in open space exposing to vagaries of weather 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, Chengalpattu made in C.M.P.No.3084 of 2020, dated 05.08.2020 and the criminal revision is allowed.

11.The learned Judicial Magistrate No.II, Chengalpattu is directed to return of the vehicle, viz.,TVS Appache, bearing registration number TN 19 AM 1293, which is seized by the respondent in Crime no.221 of 2020 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.25,000/- (Rupees twenty five thousand only) to the satisfaction of the learned Judicial Magistrate No.II, Chengalpattu;

(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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Chengalpattu.

2.Do Thro The Chief Judicial Magistrate
Chengalpattu

3.The Inspector of Police,
P.W.E Chengalpattu Police Station,
Chengalpattu District.

4.The Public Prosecutor,
High Court, Madras.

+1 Cc to Mr.R.Sasikumar, Advocate sr 35837.

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RR(CO)
SP(04/12/2020)



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