

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.967 of 2020

Muthu

... Petitioner

Vs.

The State rep by its,
The Inspector of Police,
PEW/Kancheepuram,
Kancheepuram District.
(Crime No.438 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 07.10.2020 made in C.M.P.No.959 of 2020 on the file of the District Munsif Cum Judicial Magistrate, Sriperumbudur and to allow Criminal Revision Petition.

For Petitioner : Mr.C.Prabakaran

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

ORDER

The petitioner, who is the owner of the vehicle viz., Maruthi Swift Car, bearing registration number TN 09 CK 6122, filed a petition in C.M.P.No.959 of 2020 for return of vehicle, which was seized in connection with Crime No.438 of 2020. The learned District Munsif Cum Judicial Magistrate, Sriperumbudur, by order dated 07.10.2020, dismissed the petition, against which, the petitioner before this Court.

2.The case of the prosecution is that on 30.07.2020 at about 14.30 hours, when the respondent Police on patrol duty, intercepted the Maruthi Swift Car bearing Registration No.TN 09 CK 6122 near Pennalur EB Office and conducted an enquiry. The police questioned the driver, he disclosed his identify as Muthu, residing at No.6/66, Sri Ram Pettai, CIT Nagar, Chennai -32. When his car was searched, 180 ML of brandy bottles found. When the same was questioned, he confessed that he was transporting the bottles for sale. Thereafter, he was arrested and the brandy bottles were seized and the car was taken into

custody by the respondent Police. The respondent Police registered an FIR in Crime No.438 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 driver-cum-owner of the vehicle viz., Maruthi Swift Car, bearing registration number TN 09 CK 6122, Engine Number D13A3069649 and Chassis Number MA3FJEB1S00B09878. The learned counsel further submitted that the petitioner seems to have transported 96 brandy bottles (each bottle 180 ml) for sale. On seizure of the vehicle by the respondent Police, the petitioner filed a petition under Section 451 r/w 457 Cr.P.C before the learned the District Munsif Cum Judicial Magistrate, Sriperumbudur 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 the Registration Certificate and Insurance Copy of the vehicle. Since the respondent Police made 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 District Munsif cum Judicial Magistrate, Sriperumbudur, 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 had given a finding 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.

5.Recently this Court in the case of "B.Sathish Kumar Versus State rep. by Inspector of Police, Anaicut Police Station, Kancheepuram in Cr1.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 were already initiated by the Prohibition Officer. The initiation of the confiscation proceedings is reflected in the FIR in Crime No.438 of 2020 as well in the order of the lower Court. The petitioner had illegally transported the 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. A show cause notice for the confiscation proceedings, was issued to the petitioner on 01.10.2020. 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., Maruthi Swift Car, bearing registration number TN 09 CK 6122, Engine Number D13A3069649 and Chassis Number MA3FJEB1S00B09878 and he is an accused in Crime No.438 of 2020. It is seen that from 30.07.2020, 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 CrI.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 (CrI.) 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 District Munsif cum Judicial Magistrate, Sriperumbudur made in C.M.P.No.959 of 2020, dated 07.10.2020 and the criminal revision is allowed.

11.The learned District Munsif cum Judicial Magistrate, Sriperumbudur is directed to return the vehicle, Maruthi Swift Car, bearing registration number TN 09 CK 6122, 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 District Munsif cum Judicial Magistrate, Sriperumbudur.

(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, by the court below, as well as by the District Collector of the District, Additional Superintendent of Police, Prohibition Enforcement Wing, Kancheepuram or authorized officer in that behalf by the Government.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate, Sriperumbudur.
2. The District Collector, Kancheepuram.
3. The Additional Superintendent of Police, Prohibition Enforcement wing, Kancheepuram.
4. The Inspector of Police, PEW/Kancheepuram, Kancheepuram District.
5. The Public Prosecutor, High Court, Madras.

+1cc to M/s.C.Prabakaran, Advocate, S.R.No.36133

Cr1.R.C.No.967 of 2020

AJS (CO)
RV(02/12/2020)