

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.RC.No.1220 of 2020

Gagarin
S/o.Samuvel

.. Petitioner

/versus/

1.The State rep.by

Assistant Commissioner of Police,
Prohibition Enforcement Wing,
Chennai North Zone,
Chennai.

2.The Inspector of Police, (PEW),

Madhavaram Prohibition Wing,
Chennai.

(Crime No.115 of 2020)

.. Respondent

Prayer: Criminal Revision Case filed under Section 397 and 401 of Code of Criminal Procedure filed to set aside the order passed by the District Munsif Cum Judicial Magistrate Madhavaram in C.M.P.No.620 of 2020 order dated 27.11.2020 and direct the second respondent Police to return the Two Wheeler bearing Registration No.TN 03 AB 4794, TVS NTORQ (Red and Black) and Engine Number No.BG7AL2615468, Chassis No.MD626AG79L2A08828 which was seized by the second respondent Police in Crime No.115 of 2020.

For Petitioner : Mr.S.Shankar

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

ORDER

The petitioner, who is the owner of the vehicle viz., TVS NTORQ, bearing registration number TN 03 AB 4794, filed a petition in C.M.P.No.620 of 2020 for return of vehicle, which was seized in connection with Crime No.115 of 2020. The learned District Munsif Cum Judicial Magistrate, Madhavaram, by order dated 27.11.2020, dismissed the petition, against which the petitioner before this Court.

2.The case of the prosecution is that 02.07.2020, when the Inspector of Police attached to the respondent Police Station along with his team conducted road check the vehicle/two wheeler bearing registration Number TN 03 AB 4794 (TVS NTORQ) was signalled to stop. When the Respondent Police questioned the rider of the bike he disclosed his identify as Damodharan. When his two wheeler was searched, 67 bottles of Brigadir's Brandy180 ml were found. The said Damodharan was arrested and the Brandy bottles were seized and the bike was also taken into custody by the respondent Police. Thereafter, the respondent Police registered an FIR in Crime No.115 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., TVS NTORQ, bearing registration number TN 03 AB 4794, and one Damodharan misused his bike without his knowledge. On coming to know about the seizure of the vehicle by the respondent Police, the petitioner filed a petition in Crl.M.P.No.620 of 2020 before the learned District Munsif cum Judicial Magistrate, Madhavaram, 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 District Munsif cum Judicial Magistrate, Madhavaram, 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, Vaippur Police Station, Vaippur 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.115 of 2020 as well in the order of the lower Court. The petitioner had knowingly allowed his vehicle to be used by one Dhamodharam to illegally transport 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. Therefore, a show cause notice for the confiscation proceedings, was issued to the petitioner on 16.10.2020. 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 NTORQ, bearing registration number TN 03 AB 4794, and he is not an accused in Crime No.115 of 2020. It is seen that from 02.07.2020, 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, Madhavaram made in C.M.P.No.620 of 2020, dated 27.11.2020 and the criminal revision is allowed. Connected miscellaneous petition is closed.

11. The learned District Munsif Cum Judicial Magistrate, Madhavaram is directed to return the vehicle, viz., TVS NTORQ, bearing registration number TN 03 AB 4794, 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 is directed to deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) as non-refundable deposit through RGS/NEFT in favour of the "The Dean, Rajiv Gandhi Government General Hospital, Chennai, bearing A/c. No.10273425961, State Bank of India, Park Town (Chennai), 68, Evening Bazaar Road, Chennai, IFSC:SBIN0001856, on such payment and production of proof, the vehicle shall be returned.

(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

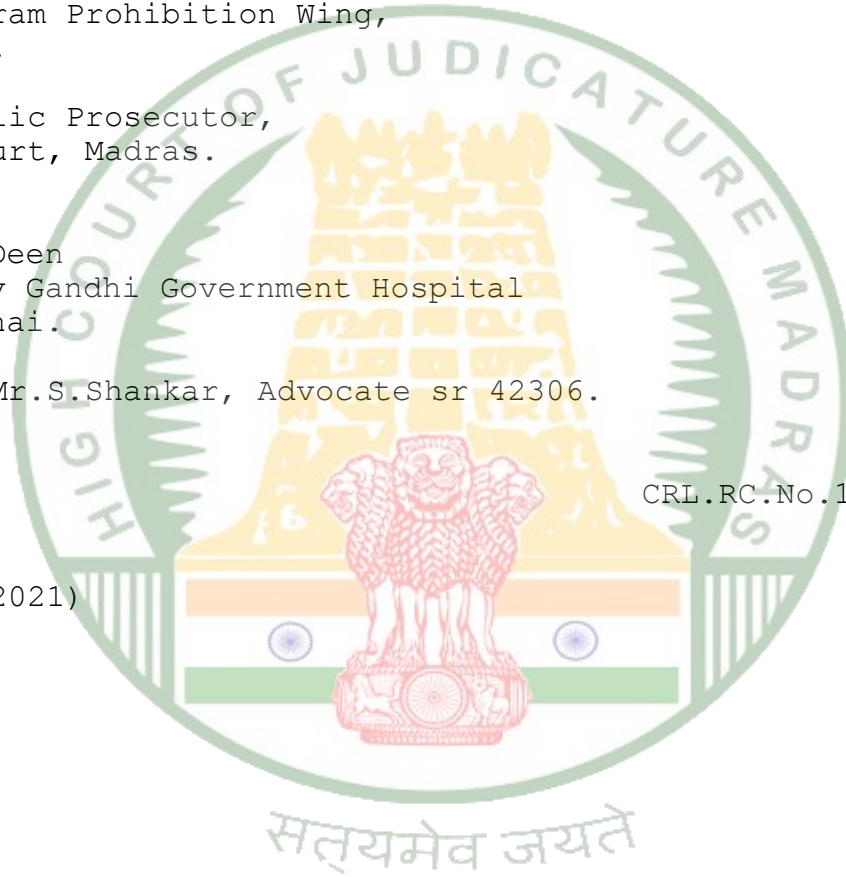
- 1.The District Munsif Cum Judicial Magistrate,
Madhavaram.
- 2.The Assistant Commissioner of Police,
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- 3.The Inspector of Police, (PEW),
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- 4.The Public Prosecutor,
High Court, Madras.

Copy to
The Deen
Rajiv Gandhi Government Hospital
Chennai.

+1 CC to Mr.S.Shankar, Advocate sr 42306.

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SP(07/01/2021)



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