

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1234 of 2020

R.Poongodi,  
W/o.Ramesh.

... Petitioner

Vs.

State: rep. by its,  
Sub-Inspector of Police,  
Magaral Police Station,  
Kancheepuram District.  
(Crime No.315/2020).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records of the case Crl.M.P.No.235 of 2020 in Crime No.315 of 2020 on the file of Court below allow of Revision Petition and set aside the order dated 10.09.2020 passed by the learned Judicial Magistrate No.II, Kancheepuram and grant relief sought for under Section 451 Cr.P.C.

For Petitioner : Mr.G.Punniakoti

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

ORDER

The petitioner is the owner of the vehicle viz., Splender plus bearing Registration Number TN 21 BK 2673 (Grey Colour) and filed a petition in Crl.M.P.No.235 of 2020 Crime No.315 of 2020 for return of vehicle, which was seized in connection with Crime No.315 of 2020. The learned Judicial Magistrate No.II, Kancheepuram, by order, dated 10.09.2020 dismissed the petition, against which the petitioner before this Court.

2.The case of the prosecution is that on 18.06.2020, the petitioner's son Vallarasu along with his friend Nantha Kumar have taken the vehicle to Tasmac at Uthiramerur and purchased 96 Brandy Bottles containing 180 ml each and transported the same using the above said vehicle to village. On a routine surveillance, the respondent Police had intercepted the vehicle

driven by the petitioner's son and seized 96 bottles of liquor and arrested them. Thereafter, the respondent Police registered a case in Crime No.315 of 2020 for offence under Sections 4(1)(aa) 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., Splender plus bearing Registration Number TN 21 BK 2673 (Grey Colour). The involvement of the said vehicle in the offence came to be known to the petitioner only after the Police informed her. The vehicle has been used by them without her knowledge. The petitioner is the sole breadwinner of the family. The petitioner filed a petition under Section 451 and 457 Cr.P.C., before the learned Judicial Magistrate No.II, Kancheepuram on the ground that the petitioner was in need of his vehicle. In support of ownership of vehicle, the petitioner produced relevant documents along with affidavit. Since the prosecution before the Court below made 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, Kancheepuram, 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 Versus Shakthivel, Inspector of Police-cum-Station House Officer, Dated 08.01.2010 in Contempt Petition No.1156 of 2020", 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 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 and the offences under the Indian Penal Code, ordered

return of vehicle to the owner. Hence, he prayed that the petitioner to be entrusted with the interim custody of the vehicles. 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 order of the lower Court. The petitioner had knowingly transported 96 Brandy bottles of 180 ml each. 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., Splendor plus bearing Registration Number TN 21 BK 2673 (Grey Colour). It is seen that from 18.06.2020, 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 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 Judicial Magistrate No.II, Kancheepuram, made in CrI.M.P.No.235 of 2020, dated 10.09.2020 and the criminal revision is allowed.

11.The learned Judicial Magistrate No.II, Kancheepuram is directed to return the vehicle, viz., Splender plus bearing Registration Number TN 21 BK 2673 (Grey Colour) to the petitioner, on the following conditions:-

(i)The petitioner shall produce the original RC Book of the vehicle 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 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.

(v)The petitioner shall participate in the confiscation proceedings if any initiated and shall produce the vehicle before the confiscation authority. This order is subjected to the confiscation proceedings.

Sd/-  
सत्यमेव जयते

Assistant Registrar(CS V)

//True Copy//

WEB COPY

Sub Assistant Registrar

vv2  
To

1.The Judicial Magistrate No.II,  
Kancheepuram.

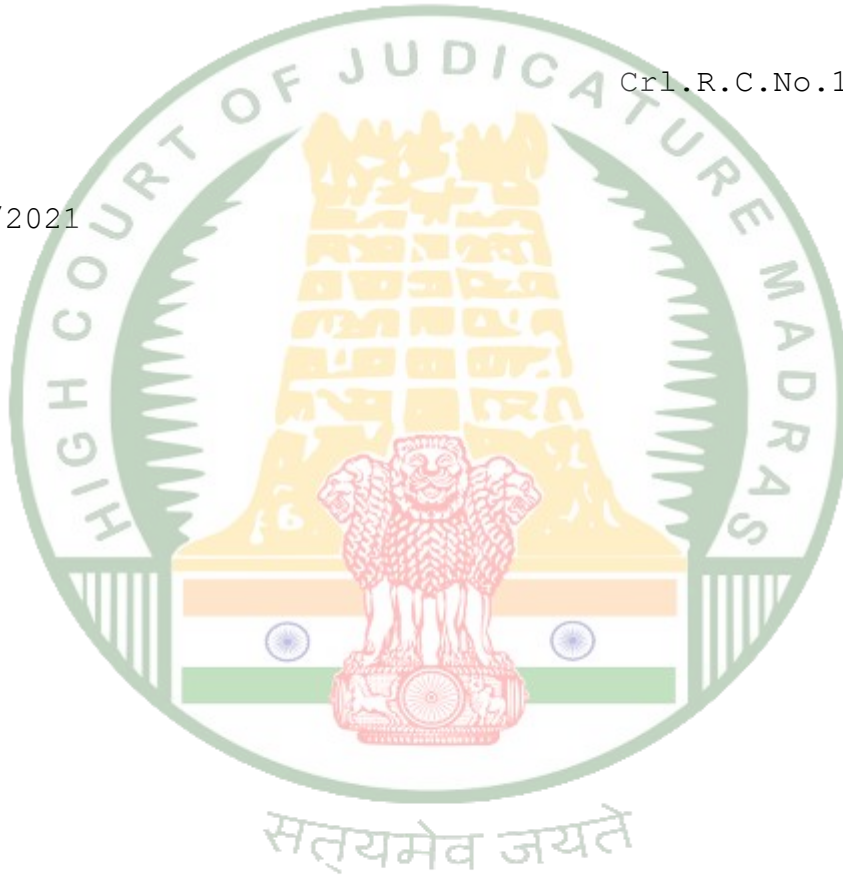
2.The Sub-Inspector of Police,  
Magaral Police Station,  
Kancheepuram District.

3.The Public Prosecutor,  
High Court, Madras.

4.The Dean,  
Rajiv Gandhi Government General Hospital,  
Chennai.

Cr1.R.C.No.1234 of 2020

sr II[co]  
srg 05/01/2021



WEB COPY