

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.74 of 2021

K.Somasundaram

... Petitioner/Petitioner

..vs..

State represented by

The Inspector of Police,
CSCID Thiruvallur Police Station,
Crime No.182 of 2020

... Respondent/Respondent

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to set aside the order passed by the learned Judicial Magistrate No.I, Thiruvallur in Crl.M.P.No.3160 of 2020 dated 04.12.2020 and consequently direct the respondent police to return the Tanker Lorry bearing Reg.No.TN 03 AZ 2599 Model Tanker Lorry Ashok Leyland (NP Colour) having Engine No.HGHZ402876 and Chassis No.MB1A3CFD8HRGS 3957, which was seized by the respondent police in Crime No.182 of 2020.

For Petitioner : Mr. E.Maharajan

For Respondents: Mr.A.Madhan
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed to set aside the order passed by the learned Judicial Magistrate No.I, Thiruvallur in Crl.M.P.No.3160 of 2020 dated 04.12.2020 and consequently direct the respondent police to return the Tanker Lorry bearing Reg.No.TN 03 AZ 2599 Model Tanker Lorry Ashok Leyland (NP Colour) having Engine No.HGHZ402876 and Chassis No.MB1A3CFD8HRGS 3957, which was seized by the respondent police in Crime No.182 of 2020.

2. The petitioner/accused is the owner of the vehicle viz., Tanker Lorry bearing Registration Number TN 03 AZ 2599, Model Tanker Lorry Ashok Leyland (NP Colour) having Engine No.HGHZ402876 and Chassis No.MB1A3CFD8HRGS 3957 and filed a petition in Crl.M.P.No.3160 of 2020 for return of vehicle, which was seized in connection with Crime No.182 of 2020. The learned Judicial Magistrate No.I, Tiruvallur, by order, dated 04.12.2020 dismissed the petition, against which, the petitioner before

this Court.

3. The case of the prosecution is that on 15.09.2020, when the Deputy Superintendent of Police was on patrol duty, received information as though diesel was illegally selling by some persons in Paramasivam Old Iron Shop, Karaiyambedu. The Police Personnels went to that place and found diesel was unloading from two vehicles viz., TN 03 AZ 2599 Ashok Leyland Tanker Lorry and TN 03 U 2599 Ashok Leyland Tanker Lorry in 200 litre iron drum. On seeing the police, the persons, who were unloading the diesel, attempted to flee from the scene. The Police Personnels secured them and made an enquiry. They disclosed their identity as Paramasivam, Perumal, Gnanavel, Balamurugan and Ramesh. The said Paramasivam gave confession that he is running Old Iron Shop at Karaiyambedu and used to buy diesel in lower price of Rs.50/- per litre and sell the same for Rs.60/- per litre with the help of others. Thereafter, the respondent Police registered a case in Crime No.182 of 2020, for offence under Section 2(e)(vii) of the Motor Spirit and High Speed Diesel (RSDPM) Order, 1998 r/w 7(i)a(ii) of the Essential Commodities Act, 1955. Based on the confession of accused, the petitioner was arrested and the two vehicles involved in the crime were seized.

4. The learned counsel for the petitioner submitted that there are two vehicles seized and one of the owner of the said vehicles already filed petition and got order and other owner of the vehicle has filed the petition before the learned Magistrate and the same was dismissed. Already this Court has passed the order for return of one vehicle which has been seized on the very same occurrence and accordingly the said vehicle has also been released. Therefore, considering the same, there cannot be any discrimination and therefore prayed to set aside the order passed by the learned Judicial Magistrate No.I, Tiruvallur.

5. He further submitted that the petitioner is the owner of the vehicle viz., TN 03 AZ 2599 Ashok Leyland Tanker Lorry and he has been arrayed as accused based on the confession. The petitioner is neither involved in this case nor done any illegal act and he is only owner of the vehicle. The petitioner filed a petition under Section 451 and 457 Cr.P.C., before the learned Judicial Magistrate No.I, Thiruvallur 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 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.I, Thiruvallur, 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."

6. 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.

7. 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 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.

8. 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 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.

9. This Court considered the rival submissions and perused the materials available on record.

10. It is not in dispute that the petitioner is the owner of the vehicle TN 03 AZ 2599 Ashok Leyland Tanker Lorry. It is seen that from 15.09.2020, 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.

11. 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.

12. In view of the aforesaid reasons, this court is constrained to set aside the order passed by the learned Judicial Magistrate No.I, Thiruvallur, made in Crl.M.P.No.3160 of 2020, dated 04.12.2020 and the criminal revision is allowed.

13. The learned Judicial Magistrate No.I, Thiruvallur is directed to return the vehicle TN 03 AZ 2599 Ashok Leyland Tanker Lorry 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.50,000/- (Rupees Fifty 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/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Mpa

To

1. The Judicial Magistrate No.I,
Thiruvallur.
- 2.The Inspector of Police,
CSCID Thiruvallur Police Station,
Thiruvallur District.
3. The Public Prosecutor,
High Court, Madras.

Copy To

- 1.The District Collector,
Thiruvallur.
- 2.The Dean Rajiv Gandhi Government General Hospital,
Park Town, Chennai.

+1cc to Mr.Maharajan, Advocate, S.R.No. 8875

Cr1. R.C. No.74 of 2021

MG(CO)
GN(24/03/2021)

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