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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2021

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.323 of 2021

Karthik

...Petitioner

Versus

State Rep.by Inspector of Police,
Prohibition Enforcement Wing,
Vaniyambodi,
Vellore District.

...Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records on the file of the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District in Crl.M.P.No.1217 of 2020, dated 05.12.2020 and set aside the order.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.Damodaran

ORDER

This Criminal Revision Case has been filed to set aside the order dated 05.12.2020, made in Crl.M.P.No.1217 of 2020, passed by the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District.

2.The petitioner is the owner of Piaggio Auto Rickshaw bearing registration No.TN-23-BX-1675. He filed the petition for return of his vehicle, which was seized in connection with the case in Crime No.643 of 2020, for the offence under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937. The petitioner being the owner of the vehicle filed the petition for return of property in CMP.No.1217 of 2020 before the Additional District Munsif cum Judicial Magistrate Court, Ambur, Vellore District. The Lower Court, by an order dated 05.12.2020, dismissed the case, against which the present petition is filed.



3.The gist of the case is that on 29.10.2020, the respondent/police was under routine surveillance near T.K. Melsanagakuppam, Kuttu Road, at Ambur Junction. At that time, the above said vehicle proceeded on that road. When the respondent/police attempted to stop the vehicle, it did not stop and proceeded with over speed. Thereafter, the respondent/police stopped the Auto and questioned the driver. On questioning, the auto driver disclosed that his name is Prabhu and he clandestinely transported liquor bottles viz., One Man Army, XXX Rum and 100 number of bottles of Chef XXX Rum without any valid license. Thereafter, the Auto and the accused/driver were produced before the respondent/police and a case came to be registered. As regards the vehicle, the Additional Superintendent of Police, initiated confiscation proceedings under Section 14(4) of the TNP, Act.

4.The contention of the petitioner is that he is the owner of the vehicle and he is not an accused. Further, he submitted that the vehicle was taken by his friend one Prabhu, for the purpose of medical emergency, to take his mother to the hospital, but, he misused the vehicle without authority and knowledge of the petitioner and proceeded with the above said liquor bottles. The petitioner's livelihood depends upon the above said Auto Rickshaw, which he used to hire for his livelihood. Though it is stated that the confiscation proceedings has been initiated as early as on 02.12.2020, as on date, no communication had been received by the petitioner about the confiscation proceedings. The vehicle is kept in open space whereby value of the vehicle is getting diminished and the condition of the vehicle is getting deteriorated.

5.The learned Additional Public Prosecutor submitted that the petitioner involved in prohibition offence. The vehicle was seized when it was driven by one Prabhu, who had transported hundreds of liquor bottles. He was caught red-handed and arrested. When the vehicle was seized on 29.10.2020, the confiscation proceedings has been initiated and letters have been communicated to the Additional Superintendent of police. If the vehicle is returned to the petitioner, he would alienate the vehicle and the confiscation proceedings could not be completed. Therefore, the learned Additional Public Prosecutor objected to the return of the vehicle.

6.Considering the rival submissions and perused the materials. The petitioner is the owner of the vehicle and he also produced the RC book, license, insurance and other documents to prove his ownership. The contention of the petitioner is that the vehicle is kept in open space and it's value will be diminished and the condition of the vehicle will



be deteriorated. In support of his contention, he relied upon a decision rendered by this Court, in the case of Oli Mohammed Vs. State reported in 2005(1) LW (Cr1) 93 and in the decision in the case of Malar Vs. State reported in 2013(2) CTC 315

7. Admittedly, the petitioner is the owner of the vehicle and not an accused in this case. Though as early as on December 2020, confiscation proceedings have been initiated, till date it is not known as to what is the stage of such proceedings. The petitioner's livelihood depends upon the income earned through hiring of the Auto. This Court consistently held that the pendency of the confiscation proceedings would not be a bar for return of the property to its owner. Having regard to the above, this Court is inclined to issue directions to return the vehicle to the petitioner subject to the following conditions:-

i) Upon production of original RC Book and Insurance.

ii) Photostat of the documents to be produced to the respondent/police.

iii) The petitioner shall execute a bond for a sum of Rs.25,000/-.

iv) Thereafter, the respondent/police release the vehicle to the petitioner.

8. Once the normal functioning of the Courts commences, within 15 days from thereon, the petitioner shall execute the bond of Rs.25,000/- and produce the original documents of RC, Insurance, submit the photostat copies. The petitioner also file an affidavit that the vehicle will not be alienated and it will be produced as and when he is directed to do so.

9. With the above observations and directions, the Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

klt/vv



To

1.The learned Additional District Munsif cum Judicial
Magistrate,
Ambur, Vellore District.

2.The Inspector of Police,
Prohibition Enforcement Wing,
Vaniyambodi, Vellore District.

3.The Public Prosecutor,
High Court, Madras.

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