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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.572 of 2021

S.Tamilarasan

...Petitioner/Petitioner

Versus

State By

The Inspector of Police,
Kattur Police Station,
Thiruvallur District.
(Crime No.232 of 2021)

...Respondent/Respondent

Criminal Revision Case filed under Section 397 read with 401 Criminal Procedure Code, to set aside the order dated 01.09.2021 passed in Crl.M.P.No.3914 of 2021 on the file of the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District dismissing the petition to return the vehicle of two wheeler Honda Active bearing Registration No.TN-18-BA-5643 to the petitioner.

For Petitioner : Mr.R.Sasikumar

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed, seeking a direction to set aside the dismissal order dated 01.09.2021 in C.M.P.No.3914 of 2021, passed by the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District and for a consequential direction to return the Honda Active two wheeler bearing Registration No.TN-18-BA-5643 to the petitioner, which was seized in Crime No.232 of 2021, by the respondent police/the Inspector of Police, Kattur Police Station, Thiruvallur District.

2.The petitioner claims to be the owner of the vehicle viz., Honda Activa two wheeler bearing Registration No.TN-18-BA-5643, in Pearl Precious White colour, having Engine No.JS50EG0157123 and Chassis No.ME4JF50AGKG157095. He had filed a petition, under Section 451 & 457 of Cr.P.C., in Crl.M.P.No.3914 of 2021



for releasing the said two wheeler vehicle, which was seized in connection with Crime No.232 of 2021. The learned Judicial Magistrate No.II, Ponneri, Thiruvallur District, by an order, dated 01.09.2021 dismissed the petition, against which, the present Criminal Revision Case is filed before this Court.

3.The case of the prosecution is that on 06.06.2021, the respondent/police was on patrol duty, at L&T '0' Gate Kattupalli, to curb the illegal transportation of liquor bottles. At that time, they intercepted one Honda Active Two wheeler bearing Registration No.TN-18-BA-5643, at about 07.30 p.m., and interrogated the petitioner. His answer was not cogent and credible and therefore, under suspicion, they searched the vehicle and found 36, Plastic Bottles of Old Timer Whisky. Therefore, the respondent Police registered a case in Crime No.232 of 2021, for offence under Section 4(i)(a) of Tamil Nadu Prohibition, Act, 1937 and seized the above said vehicle. Thereafter, the petitioner filed a petition before the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District in CrI.M.P.No.3914 of 2021 under Section 451 & 457 of Cr.P.C., to direct the respondent/police to release the above said Car and the same was dismissed. Hence, the present case.

4.The learned counsel for the petitioner would submit that the vehicle is kept in open space and in the exposure of sun and rain and thereby, the vehicle would get severely damaged. The petitioner had filed a petition in CrI.M.P.No.3914 of 2021, before the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District, seeking for return of vehicle whereas, the learned Magistrate, without considering the fact, by relying the order dated 02.03.2018 of this Court passed in CrI.R.C.No.(MD). No.103 of 2018 in the case of Mohammed Shakul Hameed Vs. The State rep.by, The Sub-Inspector of Police, Kumbakonam Taluk Police Station, Thanjavur District. In that case, this Court by placing reliance on the decision of the Division Bench of this Court in the case of David Vs. Shakthivel, Inspector of Police-cum-Station House Officer reported in 2010 (1) L.W. (CrI.) 129, held that once the confiscation proceedings have been initiated by the appropriate authority, the Court may not have the power to entertain the petition filed under Section 451& 457 of Cr.P.C., and it will arise only at the stage of initiation of confiscation proceedings. Accordingly, on the basis of the aforesaid decisions, the Court below dismissed the said petition. Therefore, the petitioner has filed the present revision before this Court. He would further submit that the petitioner is ready to comply with any condition that may be imposed by this Court and prayed for returning the vehicle to the petitioner.

5.The learned Government Advocate (CrI. Side) appearing for the respondent/police would submit that the said petitioner



indulged in illegal transportation of TASMAC liquor bottles through his vehicle. He would further submit that the confiscation proceedings have already been initiated and if the vehicle is released at this stage, there is every possibility of tampering the engine and chassis number of the vehicle and thereby, the investigation would be defeated. Hence, he objects for release of the vehicle.

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

7.On a perusal of records, it is seen that the case was registered in Crime No.232 of 2021 and the vehicle was seized. Pending investigation, the petitioner filed a petition for releasing his vehicle, however, the same was dismissed by the Court below. Considering the facts and circumstances of the case and that the vehicle is kept in the open space and exposed to heat, rain and dust, this Court directs the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District to return the vehicle Honda Active two wheeler bearing Registration No.TN-18-BA-5643, 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.25,000/- (Rupees Twenty Five Thousand only), as non-refundable deposit through RGS/NEFT in favour of to the Joint Secretary & Treasurer, Chief Minister's Public Relief Fund, Finance (CMPRF) Department, Government of Tamil Nadu, Secretariat, Chennai 600 009, Tamil Nadu, India, e-mail: jscmprf@tn.gov.in or by Electronic Clearing System (ECS) to Indian Overseas Bank, Secretariat Branch, Chennai 600 009, S.B.Account No.11720 10000 00070, IFS Code IOBA0001172, CMPRF PAN: AAAGC0038F and 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 or the Court below as well as by the District Collector of the District or authorized officer in that behalf by the Government;



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

8. With the above observations and directions, the Criminal Revision Case is allowed by setting aside the order dated 01.09.2021 passed in C.M.P.No.3914 of 2021, by the learned Judicial Magistrate No.II, Ponneri, Thiruvallur District.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Judicial Magistrate No.II,
Ponneri, Thiruvallur District.
2. The Inspector of Police,
Kattur Police Station,
Thiruvallur District.
3. The Public Prosecutor,
High Court, Madras.

Copy To

The Joint Secretary and Treasurer
Chief Minister Public Relief Fund
Finance (CMPRF) Department,
Secretariat, Chennai - 600 009.

+1cc to M/s.R.Sasikumar, Advocate, S.R.No.48527

CrI. R.C. No.572 of 2021

SJ(CO)
RGA(13/10/2021)