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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.18894 of 2021

R.Balamurugan

...Petitioner/Accused-2

Vs.

The State Rep.by
The Inspector of Police,
Vennanthur Police Station,
Namakkal District.

...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records and to set aside the return docket order dated 09.09.2021 passed by Principal District and Sessions Court, Namakkal, made in C.M.P.No.Nil/2021 in C.P.No.43 of 2021 in Crime No.633 of 2021 on the file of Respondent police.

For Petitioner	:	Mr.B.Jawahar
For Respondent	:	Mr.A.Damodaran
		Addl.Public Prosecutor

ORDER

The petitioner's grievance is that the Sessions Court, even without numbering the petition of the petitioner seeking interim custody of the vehicle, closed the petition with a direction to approach the proper Forum.

2.The contention of the learned counsel for the petitioner is that the petitioner is the owner of Tavera car bearing registration No.TN 29 AY9474. The vehicle was searched by the respondent police, 44 bottles of liquor containing 180ml in each bottle were found from the vehicle. The petitioner was arrested and the vehicle was seized for transporting the liquor bottles violating the Tamil Nadu Prohibition Act.

3.The petitioner filed a petition for return of the case property i.e. Tavera Car before the Judicial Magistrate, Rasipuram in C.M.P.No.1170 of 2021. The Judicial Magistrate, Rasipuram, by order dated on 16.08.2021, recording that the confiscation proceeding was initiated by ADSP- PWE, Namakkal, on 28.07.2021, hence, this petition is closed with a direction to approach the proper forum. Aggrieved against the same, the



petitioner had filed a Revision before the Principal District and Sessions Court, Namakkal and the same was not entertained, numbered and returned for the reason that the respondent police initiated confiscation proceedings and the confiscation proceeding is pending before ADSP, Namakkal.

4.The learned counsel for the petitioner submitted that this Court, in on several occasions, held that pendency of the confiscation proceeding will not be a bar to return the property involved in prohibition offence. The only condition was that the return of the property can be given to the petitioner with condition subject to outcome of the confiscation proceeding. The petitioner is willing to file an affidavit and give an undertaking that if the vehicle is returned to the petitioner, it would be subject to the outcome of the confiscation proceedings. The petitioner has got a good chance in succeeding in the confiscation proceeding. He further relied on the judgment of this Court in the case of Sakthidevi Vs. State by The Inspector of Police, Thittachery Police Station , Nagapattinam District, in Crl.RC.No.501 of 2011, where, this Court in similar situation directed to return the seized vehicle pending confiscation proceedings.

5.Finding force in the submission of the learned counsel for the petitioner and this Court had earlier passed an order in Crl.R.C.No.501 of 2011 in similar situation and considering that the vehicle is now kept in the open space exposed to vagaries of weather and the vehicle is kept idle, the value of the vehicle is diminishing day by day and continuing to keep the vehicle in open area would make it unusable, this Court directs the District and Sessions Judge to entertain the return of property petition following the guidelines of this Court and to pass appropriate orders on merits by giving priority and to conclude the matter preferably within a period of one month from the date of receipt of a copy of this order.

6.With the above direction, the criminal original petition is disposed of.

7.Registry is directed to return the original criminal revision petition filed by the petitioner, so that, the petitioner can file the same before the District and Sessions Court to seek his remedy.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar



nr/sms

To

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1. The Principal District and Sessions Judge
Namakkal.
2. The Inspector of Police,
Vennanthur Police Station,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.B.Jawahar, Advocate sr 53965.

CRL.O.P.No.18894 of 2021

NMI (CO)
SP(22/10/2021)