



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.24918 of 2021

Rajasekar

...Petitioner

Versus

State Rep. by
The Sub Inspector of Police,
Athur Town Police Station,
Athur, Salem District.
Cr. No.268/2021

...Respondent

Prayer: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to direct the respondent police to produce the vehicle bearing Regn. No.TN 77 P 4745 Pulsar Two Wheeler before the learned Judicial Magistrate No.1, Athur, Salem District in view of the order dated 04.10.2021 made in Cr1.M.P. No.2087/2021 passed by the learned Judicial Magistrate No.1, Athur, Salem District.

For Petitioner : Mr.J.Shanmuga Sundara Babu

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

O R D E R

This petition has been filed to direct the respondent police to produce the petitioner's vehicle bearing Reg.No.TN 77 P 4745 Pulsar before the learned Judicial Magistrate No.I, Athur, Salem District vide order dated 28.06.2021 in Cr1.MP.No.2087 of 2021 within a stipulated period.

2. The grievance of the petitioner is that the petitioner's vehicle was seized by the respondent police in Crime No.268 of 2021 for the offence under Section 4(1) (a) of the Tamil Nadu Prohibition Act, 1937. Though the petitioner is not the accused in this case, the vehicle has been falsely implicated. Hence, he has filed the return of property petition in Cr1.M.P.No. 2087 of 2021. The trial Court by order dated 04.10.2021, directed the



respondent police to hand over the petitioner's vehicle within a week and get the C.P. Number. Even thereafter, the respondent police is not handing over the vehicle before the trial Court. The vehicle has been kept in open place and it is being exposed to vagaries of weather and the vehicle will completely damaged, if it is unused. The vehicle is required urgently for the petitioner's day-to-day life. Hence this petition.

3. The learned Government Advocate (Crl.Side) submitted that the vehicle is subjected to confiscation proceedings initiated by the Assistant Commissioner of Police, Salem in Na.Ka. No.79/T/fh/f-j-g/K-nr-2021. Initially, when the notice of confiscation was attempted to serve to the petitioner, it could not be served since he was not available, finally, on 30.08.2021, the notice was served to petitioner's father. The petitioner though aware of the confiscation proceedings failed to appear before the confiscation authority to make his submission and objections. In view of the same, the vehicle could not be handed over to the petitioner and it is for the petitioner to participate in the confiscation proceedings and seek return of vehicle. However, the petitioner has not given any objections/explanation before the confiscation authority. Accordingly, confiscation proceedings was completed on 08.11.2021, the property has been attached and now the vehicle has to be auctioned.

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

5. On a perusal of records and submissions of both sides, it is seen that this Court on an earlier occasion in Crl.O.P. No.17486 of 2021 had observed that the confiscation proceedings would not be a bar for the Courts to return/hand over the custody of the vehicle to its owner with a condition that it is subject to confiscation proceedings. The trial Court also recording the same, finding that pendency of confiscation proceedings would no way affect the right of the petitioner to seek the return of property.

6. The respondent police ought to have given sufficient opportunity of hearing to the petitioner under Section 14(4) Sub Section (iii) of the Tamil Nadu Prohibition Act, 1937. But in this case, the same was not given to the petitioner.

7. In view of the same, the confiscation proceedings is set aside. Confiscation authority is directed to issue notice afresh to the petitioner and thereafter give a liberty to the petitioner to raise his objections. After considering his objections, pass appropriate orders in accordance with law. The lower Court can deal with the property, in accordance with law,



pass appropriate orders granting interim return of property, subject to outcome of the confiscation proceedings.

8. With the above directions, this Criminal Original Petition is disposed of accordingly.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

rkp

To

1. The Sub Inspector of Police,
Athur Town Police Station,
Athur, Salem District.
2. The Judicial Magistrate No.1,
Athur, Salem District.
3. The Chief Judicial Magistrate No.1, (For Information)
Salem District.
4. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.J.Shanmuga Sundara Babu, Advocate, S.R.No.

Cr1.O.P.No.24918 of 2021

SPD[co]
NSK 19/01/2022