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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.320 of 2022

Gugan

...Revision Petitioner

vs.

State Rep. by
The Sub Inspector of Police,
Kiliyanoor Police Station,
Villupuram District.
(Crime No. 409/2021)

...Respondent

Prayer: Criminal Revision Case filed under Section 397 & 401 of Code of Criminal Procedure, praying to set aside the order dated 25.02.2022 made in Crl.M.P.No.55 of 2022 on the file of the Judicial Magistrate at Vanur dismissing the petition to return the vehicle of FIESTA 1.4 EXT bearing Registration No.PY-01-BK-5556 to the petitioner herein.

For Petitioner :Mr.E.Kannadasan
for M/s.M.Machavatharan

For Respondent :Mr.Leonard Arul Joseph Selvam
Govt. Advocate (Crl. Side)

O R D E R

The present Criminal Revision Case has been filed praying to set aside the order dated 25.02.2022 made in Crl.M.P.No.55 of 2022 on the file of the learned Judicial Magistrate, Vanur.

2. The petitioner is the owner of FIESTA 1.4 EXT bearing Registration No.PY-01-BK-5556. In a case registered in Crime No.409 of 2021 under Sections 4(1)(a), 4(1-A) of Tamil Nadu Prohibition Act (Transport), the respondent police, while at the time of investigation, recovered the said vehicle and as of now, the same is in the custody of the respondent police.



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3. Pending investigation, the petitioner filed an application in Crl.M.P.No.55 of 2022 before the learned Judicial Magistrate, Vanur, praying interim custody of the vehicle.

4. The learned Judicial Magistrate, Vanur, by order dated 25.02.2022 dismissed the said application on the ground that, in respect of the said vehicle, already confiscation proceedings are initiated and hence, the relief sought for by the petitioner cannot be sustained. Challenging the said dismissal order, the present revision petition has been filed.

5. The learned counsel appearing for the revision petitioner would submit that the petitioner is the owner of the above said vehicle. Based on the confession statement given by the main accused, the respondent Police seized the vehicle and hence the petitioner is no way held responsible for the alleged occurrence. Further, if the petition mentioned vehicle is exposed in the sunlight, the value of the vehicle become depreciated and therefore, this petition has been filed praying interim custody of the vehicle, by setting aside the order dated 25.02.2022 made in Crl.M.P.No.55 of 2022.

6. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police would contend that in respect to the petition mentioned vehicle, already confiscation proceedings are initiated and hence, the property now stated in the petition shall not be given to the petitioner.

7. Now, on going through the rival submissions made by the counsels appearing on either side with relevant records, it is true that the petitioner is arrayed as 2nd accused in the above referred case. However, in the impugned order, the learned Judicial Magistrate, Vanur, has clearly stated about the initiation of confiscation proceedings. In the said circumstances, in Oli Mohammed vs. State rep. by the Inspector of Police reported in 2015(2) L.W.(Crl.) 401 this Court after considering the following judgments in (i) Aswini Kumar Ghose v. Arabinda Bose reported in AIR 1952 SC 369 (ii) In State of West Bengal vs. Union of India reported in 1964 (1) SCR 371 (iii) In Union of India vs. G.M.Kokil reported in AIR 1984 SC 1022 (iv) In Chandavarkar Sita Ratna Rao vs. Ashalata S.Guram reported in 1986 (4) SCC 447 (v) In Narcotics Control Bureau v. Kishan Lal reported in AIR 1991 SC 558 (vi) In R.S.Rahunath v. State of Karnataka reported in 1992 (1) SCC 335 (vii) In Vishin N.Kanchandani v. Vidya Lachmandas Khanchandani reported in 2001



(1) L.W. (Crl.) 380 = AIR 2000 SC 2747 (viii) In Fitzgerald v. Champneys 1861 (30) L.J. Ch.777 at p.782 (ix) In Wood V.C., in London and Black Wall Rly v. Limehouse District Board of Works reported in 1856 (26) LJ 164 (x) In Siha Singh v. Sundan Singh reported in AIR 1921 Lah. 280 (xi) In Maharaja Pratap Singh Bahadur v. Man Mohan Dev., reported in AIR 1966 SC 1931 came to the following conclusion:~

72. Confiscation proceedings have already been initiated by the competent authority, under Section 14(4) of the Act, by issuance of a show cause and in the light of the guidelines issued in David-s case (cited supra), this Court is of the view that the impugned order of the Court below, in dismissing the petition, for return of the vehicle, alleged to have been involved in G.3.Cr.No.1368 of 2014, for the offences under the TNP Act, cannot be said to be manifestly illegal, warranting interference."

8. Further, this Court in a judgment reported in David v. Shakthivel, Inspector of Police-cum-Station House Officer, Prohibition Enforcement Wing, Tindivanam, Villupuram District reported in 2010-1-L.W.(Crl.) 129 it was held as follows:-

22. Section 14(4) of the Act does not take away the jurisdiction of the Court and exercise of power under Sections 451 or 457 Cr.P.C. But discretion of Court has to be exercised judiciously and exercised with due care and caution. Where seizure of vehicle involved in an offence of prohibition reported to the Magistrate, exercise of discretion and ordering of interim custody under Sections 451 or 457 Cr.P.C is not automatic. Notwithstanding the involvement of the vehicle in the commission of prohibition offence, if there is automatic exercise power by the Court, Section 14(4) of the Act would become a dead letter. In our view, order of confiscation of a vehicle involved in the commission of offence under Section 14(4) of TNP Act is not only punitive but also deterrent. While so, when the vehicle is involved in the commission of a prohibition offence, exercise of discretion by the Court with care and caution would serve various purposes. While before passing any order in respect of the vehicle involved in the commission of prohibition offence, Court should keep in view the spirit of Section 14(4) of the Act and the benevolent objects of Tamil Nadu Prohibition Act.



authority to complete confiscation proceedings within a stipulated period.

11. In fine, the Criminal Revision Case is dismissed. The confiscation authority i.e., the authorised officer is directed to complete the confiscation proceedings within 2 months from the date of receipt of a copy of this order.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Judicial Magistrate,
Vanur.
2. The Sub Inspector of Police,
Kiliyanoor Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.320 of 2022

SVI (CO)
SP(11/04/2022)