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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.RC.NO.329 OF 2022

Soniya

... Petitioner/Owner of the Vehicle

Vs.

State by
Inspector of Police
PEW, Madhuranthagam
Chengalpattu District
Crime No.41 of 2022

... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records and to set aside the order passed by the Judicial Magistrate No.II, Madhuranthagam, Chengalpattu District made in CMP.No.78 of 2022 dated 01.03.2022 and to direct the Judicial Magistrate to return the Mahindra Bolero Car bearing Reg.No.TN-12-AQ-0670 seized by the respondent Police in Crime No.41 of 2022 on the file of the Inspector of Police, PEW, Madhuranthagam, Chengalpattu District to the custody of the petitioner herein.

For Petitioner : Mr.S.Sasikumar

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

O R D E R

This petition has been filed to call for the records and to set aside the order passed by the Judicial Magistrate No.II, Madhuranthagam, Chengalpattu District made in CMP.No.78 of 2022 dated 01.03.2022 and to direct the Judicial Magistrate to return the Mahindra Bolero Car bearing Reg.No.TN-12-AQ-0670 seized by the respondent Police in Crime No.41 of 2022 on the file of the Inspector of Police, PEW, Madhuranthagam, Chengalpattu District to the custody of the petitioner herein.



2. The petitioner is the owner of the Mahindra Bolero Car bearing Reg.No.TN-12-AQ-0670, which was intercepted by the respondent Police during road checkup on 07.02.2022. At that time, they found that one Ashok Kumar was transporting 30 180 ML bottles of liquor in the car. The Flying Squad deployed due to the Local Body election. During the road checkup, they found the abovesaid transportation of liquor. Thereafter, a complaint was lodged and registered a case in Crime No.41 of 2022 for offence under Section 4(1) (a) of Tamil Nadu Prohibition Act (Transporting). The vehicle was seized by the respondent Police. Thereafter, the petitioner filed a petition seeking return of property under Sections 451 & 457 of Cr.P.C., in CMP.No.78 of 2022. The Lower Court by an order dated 01.03.2022 dismissed the same for the reason that already confiscation proceedings have been initiated by the Deputy Superintendent of Police, (PEW), Chengalpattu, dated 16.02.2022. In this regard, notice was issued and the same was received by the petitioner on 26.02.2022. Thereafter, the trial Court dismissed the petition for the reason that confiscation proceedings was already initiated, against which, the present Revision.

3. The learned counsel for the petitioner submits that admittedly the petitioner is not an accused in Crime No.41 of 2022. The petitioner's relatives were travelling in the petitioner's vehicle to attend the marriage, at that time, the respondent Police intercepted the petitioner's vehicle, they found that Ashok Kumar was transporting the liquor bottles. Suppressing travel of the other co-passengers, petitioner's relatives were proceeding to attend a marriage, which was not recorded. Further, the respondent Police failed to produce the vehicle before the jurisdictional Magistrate Court, which is imperative. In the First Information Report, the reference to the vehicle and the liquor bottles are recorded. The respondent Police is duty bound to produce the vehicle before the concerned Magistrate, but they failed to do so and the Lower Court dismissed the petition for the reason confiscation proceeding initiated cannot be a reason for dismissing the petition citing the guidelines issued in the case of "David V. Shakthivel, Inspector of Police-cum-Station House Officer, dated 08.01.2010 in Contempt Petition No.1156 of 2020.

4. The learned counsel for the petitioner further submitted that in the case of "Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station, Nagapattinam District in Crl.R.C.No.501 of 2011", this Court, considering the case of "David Versus Shakthivel, Inspector of Police-cum-Station House Officer, Dated 08.01.2010 in Contempt Petition No.1156 of 2020", had given a finding to the effect that mere pendency of the confiscation proceedings is not a bar for



granting the relief of interim custody of the vehicle and ordered return of vehicle. This case was followed by this Court in the case of "C.Srinivasan Versus State rep. by, The Inspector of Police, Manikandam Police Station, Trichy District in Crl.R.C.(MD)No.75 of 2019 and in the case of Sundaramoorthy Versus State rep by The Sub Inspector of Police, Vaippur Police Station, Vaippur Tiruvarur District in Crl.R.C.No.1113 of 2015". Hence, it was submitted that it is a consistent view of this Court to grant interim custody of the vehicle to the owner, who is not an accused.

5. Recently this Court in the case of "B.Sathish Kumar Versus State rep. by Inspector of Police, Anaicut Police Station, Kancheepuram in Crl.R.C.No.648 of 2019, by order dated 13.08.2019", ordered return of vehicle to the owner. Thus, this Court in the cases of vehicles involved in prohibition offences and the offences under the Indian Penal Code, ordered return of vehicle to the owner. Hence, he prayed that the petitioner to be entrusted with the interim custody of the vehicles. Further, the vehicle of the petitioner is kept in the open space exposed to vagaries of weather and thereby, the value of the vehicle is getting diminished. Further, he placed reliance on the citation of the Hon'ble Apex Court in the case of "Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290", wherein guidelines were issued in the cases of return of property to the owner.

6. The learned Additional Public Prosecutor appearing for the respondent submitted that the confiscation proceedings already initiated by the Inspector of Police, Acharapakkam Police Station, Chengalpattu District and produced the vehicle to the Deputy Superintendent of Police, (PEW). Thereafter, the Deputy Superintendent of Police (PEW) in C.No.10-43/DSP/PEW/CPT/2022 dated 16.02.2022 issue a notice to the petitioner, the petitioner received the same on 26.02.2022. The learned Additional Public Prosecutor apprehends that if the vehicle is returned to the petitioner, she would continue to indulge in such activities. It would be appropriate to await the outcome of the confiscation proceedings.

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

8. It is not in dispute that the petitioner is the owner of the vehicle viz., Mahindra Bolero Car bearing Registration Number: TN-12-AQ-0670. It is seen that from 07.02.2022, the vehicle is kept in open space exposing to sunlight and rain thereby, the value of the vehicle is getting diminished. The Hon'ble Apex Court in the case of "Sunderbhai



Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290", had given guidelines in the cases of return of property to the owner. Further, this Court in the case of "Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station, Nagapattinam District in Crl.R.C.No.501 of 2011", considered the case of "David Vs. Sakthivel, Inspector of Police-cum-Station House Officer reported in 2010 1 MLJ (Crl.) 929" and ordered return of seized vehicle to the owner, which is being consistently followed, despite initiation of the confiscation proceedings.

9. In view of the aforesaid reasons, this Court is constrained to set aside the order passed by the learned Judicial Magistrate No.II, Madhuranthagam, Chengalpattu District made in Crl.M.P.No.78 of 2022, dated 11.02.2022 and the Criminal Revision is allowed.

10. The Deputy Superintendent of Police, Prohibition Enforcement Wing, Chengalpattu District is directed to return the vehicle, viz., Mahindra Bolero Car bearing Registration Number: TN-12-AQ-0670 to the petitioner subject to petitioner executing bond before the Judicial Magistrate No.II, Madhuranthagam, Chengalpattu District on the following conditions:-

(i) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove her 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.10,000/- (Rupees Ten Thousand only), as non-refundable deposit through RGS/NEFT in favour of the "The Dean, Rajiv Gandhi Government General Hospital, Chennai, bearing A/c. No.10273425961, State Bank of India, Park Town (Chennai), 68, Evening Bazaar Road, Chennai, IFSC:SBIN0001856, while executing sureties, proof of deposit to be produced.

(iv) The petitioner shall also give an undertaking that she will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the Court below and as well as by the District Collector of the District or authorized officer in that behalf by the Government.



(v) The petitioner shall participate in the confiscation proceedings and shall produce the vehicle before the confiscation authority. This order is subjected to the confiscation proceedings.

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Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

dna

To

1. The Judicial Magistrate No.II,
Madhuranthagam,
Chengalpattu District.
2. The Chief Judicial Magistrate,
Chengalpattu.
3. The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Chengalpattu District
4. The Inspector of Police
PEW, Madhuranthagam
Chengalpattu District
Crime No.41 of 2022.
5. The Public Prosecutor
High Court, Madras.

Copy To

1. The Dean,
Rajiv Gandhi Government General Hospital,
Chennai.
2. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Sasikumar, Advocate, S.R.No.18478

Cr1.RC.No.329 of 2022

MG(CO)
RLP(23/03/2022)