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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.R.C.NO.385 OF 2022

V.Ganapathi

... Petitioner/Petitioner

Versus

The State Rep. by its
The Sub Inspector of Police,
Karuppur Police Station,
Salem City.

... Respondent/Complainant

PRAYER:-

Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to set aside the order of the learned Judicial Magistrate No.II, Salem, Salem District, in Cr.M.P.No.1059 of 2021 dated 28.09.2021 in connection with FIR in Crime No.171 of 2021 on the file of the respondent police and to pass an order to return the property to the petitioner.

For Petitioner : Mr.SP.Yuaraj

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

O R D E R

The present Criminal Revision Case has been filed praying to set aside the order dated 28.09.2021 made in Cr.M.P.No.1059 of 2021 on the file of the learned Judicial Magistrate No.II, Salem, Salem District.

2. The petitioner is the owner of Bolero Pickup Van bearing Registration No.TN-30-BE-0830. In a case registered in Crime No.171 of 2021 under Sections 4(i)(aaa) and Section 4(1-A) of Tamil Nadu Prohibition Act, 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.

3. Pending investigation, the petitioner filed a petition in Cr.M.P.No.1059 of 2021 before the learned Judicial Magistrate No.II, Salem, Salem District, praying interim custody of the vehicle.

4. The learned Judicial Magistrate No.II, Salem, Salem District, by order dated 28.09.2021 dismissed the said petition on the ground that, in respect of the said vehicle, already confiscation proceedings are completed 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 not an accused and also he is not having any knowledge in respect to the seizure of vehicle. He has further added that at the time of occurrence, without the knowledge of the petitioner, the accused took the vehicle and committed the alleged occurrence 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 for interim custody of the vehicle, by setting aside the order dated 28.09.2021 made in Cr.M.P.No.1059 of 2021.

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 completed 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 learned counsel appearing on either side with relevant records, it is true that the petitioner is not arrayed as an accused in the above referred case. However, in the impugned order, the learned Judicial Magistrate No.II, Salem, Salem District, 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



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and the benevolent objects of Tamil Nadu Prohibition Act.

23. Before proceeding to exercise the jurisdiction under Sections 451 or 457 Cr.P.C. in respect of the vehicle involved in the commission of prohibition offence, Court has to ascertain from the prosecutor whether any confiscation proceedings has been initiated by the District Collector/Prohibition Officer or authorized officer as contemplated under Section 14(4) of TNP Act. Only after affording sufficient opportunity, Court could proceed to exercise its jurisdiction and keeping in view the spirit of Section 14(4) of TNP Act, Court to pass appropriate speaking order.

24. It is pertinent to note that as against the order passed under Section 14(4) of TNP Act, appeal lies before the Court of Sessions having jurisdiction. For instance let us assume that order of confiscation has been passed by the District Collector or other Prohibition Officer incharge of the District or any other authorized officer. Under Section 14(5) of TNP Act, any person aggrieved by the order of confiscation under Section 14(4) of the Act within one month may appeal to the Court of Sessions having Jurisdiction. In such case, where an order of confiscation has been passed, if Magistrate has to pass an order for interim custody, evidently Magistrate would be transgressing upon the powers of the Executive and Sessions Judge. To avoid such situation, in dealing with the vehicles involved in a prohibition offence, exercise of powers of the Court under Sections 451 or 457 Cr.P.C. should always be with due care and caution."

9. Now, applying the ratio laid down in the above referred judgments, herein also, being the reason that already confiscation proceedings are completed allowing this revision petition would futile the entire process of confiscation. Therefore, considering the facts and circumstances of the case, I am of the considered opinion that this Criminal Revision Case is liable to be dismissed. However, the learned Government Advocate (Crl. Side) appearing for the respondent police is directed to make arrangements for serving a copy of the confiscation proceedings passed by the confiscation authority i.e., the authorised officer to the petitioner herein, within a period of one week from the date of receipt of a copy of this order.



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10. In fine, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Judicial Magistrate No.II,
Salem, Salem District.
2. The Sub Inspector of Police,
Karuppur Police Station,
Salem City.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.SP.Yuaraj, Advocate, S.R.No.20950

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PMK (CO)
PBS/06/04/2022