

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.885 of 2022
and
Crl.M.P.No.8916 of 2022

Rajasedhupathi

.. Petitioner

Vs.

The State Rep by Inspector of Police,
Kottakuppam Prohibition Enforcement Wing,
Villupuram District,
Crime No.94/2022

.. Respondent

Prayer:Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 04.03.2022 made in Crl.M.P.No.63 of 2022 in Crime No.94 of 2022 passed by the Judicial Magistrate Court, Vanur, Villupuram District.

For Petitioner : Mr.P.Krishnamurthi

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.side)

ORDER

The petitioner is the lawful owner of the vehicle, being Honda Unicorn bearing registration No.PY 05 Y 7583, which was seized for involvement in an offence under Section 4(1)(aa), 4(1-A) and 14A of Tamil Nadu Prohibition Act in Crime No.94 of 2022 and was duly produced before the learned Judicial Magistrate, Vanur, Villupuram. Thereafter, the petitioner moved an application in Crl.M.P.No.63 of 2022 for interim custody of the vehicle which is dismissed by the order, dated 04.03.2022 on the ground that confiscation proceedings are already initiated and pending and therefore, it is not desirable to hand over the

interim custody of the vehicle to the petitioner. Aggrieved by the same, the present Revision Case is laid before this Court.

2. Heard learned Counsel for the petitioner and learned Government Advocate (Crl. Side) for the respondent.

3. The learned Counsel for the petitioner submitted that even pending the confiscation proceedings, the vehicle can be returned and for the said proposition, he relied upon the orders of learned Single Judges of this Court in (i) Crl.R.C.No.501 of 2011, dated 07.04.2011 in Sakthidevi Vs. State; (ii) Crl.R.C.No.967 of 2020, dated 05.11.2020 in Muthu Vs. State; (iii) Crl.R.C.No.323 of 2021, dated 04.06.2021 in Karthik Vs. State; (iv) Crl.R.C.No.631 of 2021, dated 20.10.2021 in Rajendran Vs. State. In all the above cases, the vehicle was ordered to be returned to the original owner, after taking note of the fact that confiscation proceedings are initiated. Therefore, the learned Counsel would pray that the vehicle can be ordered to be returned which would be subject to the confiscation proceedings.

4. Per contra, the learned Government Advocate (Crl. Side) for the respondent would rely upon the orders of this Court in Crl.R.C.(MD).No.103 of 2018, dated 02.03.2018 in Mohammed Shakul Hameed Vs. State and in Crl.R.C.No.466 of 2022, dated 13.04.2022 in Raja Vs. State, whereunder, the learned Single Judges have taken a view that it may not be open for the entrustment of interim custody, pending confiscation proceedings. He would further submit that the order of the learned Judge in Mohammed Shakul Hameed Vs. State is based on the observations of the Division Bench in David Vs. Shakthivel [(2010(1) L.W. (Crl.) 129] and therefore, would pray that the Revision be dismissed.

5. I have considered the rival submissions made on behalf of both the sides and perused the material records of the case. Though there is a cleavage of opinion and two divergent views are being taken in the various judgments, which are referred on either side above, the Hon'ble Supreme Court of India in its judgment in State of M.P. Vs. Uday Singh [(2020) 12 SCC 733] has held as follows:-

"29.4.....The jurisdiction under Section 451 CrPC was not available to the Magistrate, once the authorised officer initiated confiscation proceedings."

6. Therefore, I have no other option than to follow the said view that pending confiscation proceedings, it may not be open for entrustment of interim custody. But, at the same time, it is seen that in this case even the Trial Court's order was passed on 04.03.2022 and till date, the respondents have not completed the confiscation proceedings. Therefore, I am inclined to dispose off the Criminal Revision Case on the following terms:-

(i) Since the confiscation proceedings are pending, the petitioner is not entitled for return of the vehicle;

(ii) The respondent is directed to complete the confiscation proceedings within one month from the date of receipt of copy of the order;

(iii) If the confiscation proceedings are not completed within the date stipulated above, then the petitioner will be entitled for return of the custody of the vehicle on the following conditions:-

(a) The order of the learned Judicial Magistrate, Vanur, in Crl.M.P.No.63 of 2022, dated 04.03.2022, is set aside.

(b) The petitioner will be entitled for return of the vehicle Honda Unicorn bearing registration No.PY 05 Y 7583;

(c) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove its ownership and the learned Judge, 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;

(d) The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over;

(e) The petitioner shall also give an undertaking that it 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.

(f) The petitioner shall participate in the confiscation proceedings, if any, initiated and shall produce the vehicle before the confiscation authority. This order is subjected to the confiscation proceedings.

(g) The petitioner shall not indulge in the similar offence either by using the present vehicle or any other vehicle. If the petitioner is found to be involved in any of similar offence in future either by way using the present vehicle or through any other vehicle, this order of returning the present vehicle (Honda Unicorn bearing registration No.PY 05 Y 7583), shall stand automatically vacated, and this vehicle will be again seized by the respondent/police and produce before the Court concerned. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Vanur, Villupuram District.

2. The Inspector of Police
Kottakuppam Prohibition Enforcement Wing
Villupuram District
Crime No.94/2022

3. The Public Prosecutor,
High Court of Madras.

+1 cc to Mr.P.Krishnamurthi Advocate sr44293

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