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Crl.R.C.No.1608 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.1608 of 2022

Raja

.. Petitioner

/versus/

State Represented by
The Inspector of Police,
Thalaivasal Police Station,
Salem District.
(Crime No.288 of 2022)

.. Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C.,to set aside the order dated 14.09.2022 made in Crl.M.P.No.2961 of 2022 on the file of the learned Judicial Magistrate No.II, Attur.

For Petitioner : Mr.W.Gamyles Gandhi

For Respondent : Mr.V. Meganathan
Gov. Advocate (Crl.Side)



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ORDER

Challenging the order, dismissing the petitioner's application filed under Section 451 of Cr.P.C, passed by the Judicial Magistrate-II, Attur in Crl.M.P.No.2961 of 2022 in Crime No. 288 of 2022, dated 14.09.2022 to return the vehicle, the present Revision has been filed.

2. The respondent police seized the two wheeler bearing Reg.No.TN 77 K 2291 (Hero Pleasure block colour) belonging to the petitioner on the allegation that the vehicle has been used by the accused person to illegally transport illicit arrack. Pursuant to which, the respondent police registered a case in Crime No.288 of 2022 for the offence under Section 4(1)(aaa) of Tamil Nadu Prohibition Act. The petitioner, who is the owner of the above said vehicle, filed an application before the Trial Court for returning his two wheeler bearing registration No. TN 77 K 2291. The Trial Court dismissed the petition on the ground that the vehicle has been used for transporting illicit arrack.



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3. The learned counsel for the petitioner contended that the respondent police registered a case against 1.Muthaiyan, S/o Perumal Gounder; 2.Arunkumar, S/o Duraisamy; 3. Krishnakumar, S/o Nalla Gounder and 4.Sakthivel, S/o Palanimuthu in Crime No.288 of 2022 for the offence under Section 4(1)(aaa) of the Tamil Nadu Prohibition Act for illegally transporting the illicit arrack and seized 105 liters of illicit arrack along with the vehicle viz., two wheeler bearing Reg.No.TN 77 K 2291 Hero Pleasure block colour. The petitioner is the owner of the vehicle and the accused are friends of the petitioner and he is no way connected with the crime. Hence, he filed a petition before the trial Court seeking interim custody of the vehicle and the said petition was dismissed on the ground that the said vehicle has been used for transporting illicit arrack.

4. He further submitted that the vehicle is kept in the police custody and it will be damaged and the petitioner is not an accused in this case. The petitioner will give an undertaking that he will not alienate the property and



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he will produce the vehicle as and when required before the Court below.

Thus, he seeks to order for returning the vehicle.

5. The learned Govt. Advocate (crl.side) objected to grant interim custody of the vehicle, since the vehicle has been used for transporting illicit arrack and he prayed to dismiss the case.

6. Heard both sides and perused the materials available on record.

7. On perusal of records, it is revealed that the respondent police registered a case against the petitioner in Crime No.288 of 2022 for the offence punishable under Section 4(1)(aaa) of the Tamil Nadu Prohibition Act. It is not disputed that the petitioner is not involved any crime. He is not an accused in this case. He is the owner of the vehicle bearing Registration No.TN 77 K 2291 Hero Pleasure Block Colour. According to the petitioner, he is not having any knowledge about transporting of illicit arrack and he handed over the vehicle to the accused, who are the friends of



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the petitioner. The accused have used the vehicle to transport the illicit arrack. Now the petitioner seeks return of vehicle, since the vehicle was stationed in an open yard for a long period and subject to natural calamities and unconditional weather conditions.

8. In ***Sunderbhai Ambalal Desai vs State Of Gujarat*** reported in ***[(2002)10 SCC 283]***, the Hon'ble Supreme Court in paragraph No.17 has held as follows:

"In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

9. Considering the nature of the offence involved and also considering the dictum of the Supreme Court cited supra, I am inclined to return the vehicle to temporary custody of the petitioner on certain conditions.



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10. Accordingly, the impugned order passed by the Court below is set aside and the respondent police is directed to return the vehicle bearing Registration No.TN 77 K 2291 Hero Pleasure Block Colour to temporary custody of the petitioner, on complying the following conditions:

- i. the petitioner shall prove his ownership of the vehicle by producing the R.C.Book and other relevant records;
- ii. the petitioner shall not alienate or encumber the vehicle in any manner;
- iii. the petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) before the Judicial Magistrate No.II, Attur;
- iv. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future;
- v. the petitioner shall take photograph of the vehicle; and
- vi. the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

11. Accordingly, the Criminal Revision is allowed.

22.12.2022

Index:yes/no

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To

- 1.The Judicial Magistrate-II, Attur.
2. The Inspector of Police,
Thalaivasal Police Station,
Salem District.
3. The Public Prosecutor,
High Court of Madras, Chennai.



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V.SIVAGNANAM, J.,

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