



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 06.01.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.930 of 2021

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Murugan

.. Petitioner

Vs.

State through,
the Inspector of Police,
Aviyur Police Station,
Virudhunagar District.
(Crime No.121 of 2021)

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the entire records relating to the order in Cr.M.P.No.6990 of 2021 dated 22.11.2021 passed by the learned Judicial Magistrate No.II, Virudhunagar, and to set aside the same as illegal consequently to directing the respondent to return the vehicle namely BAJAJ CT 110 bearing registration No.TN-67-BL-4956 to the petitioner.

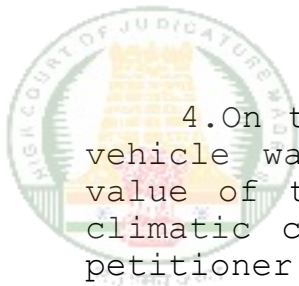
For Petitioner	: Mr.S.Malaikani
For Respondent	: Mrs.M.Aasha, Government Advocate

ORDER

This petition has been filed to set aside the order passed in Cr.M.P.No.6990 of 2021 dated 22.11.2021, on the file of the learned Judicial Magistrate No.II, Virudhunagar.

2.The two wheeler bearing registration No.TN-67-BL-4956 was seized by the respondent police in Crime No.121 of 2021 under Section 4(1)(a) and 14(A) of Tamil Nadu Prohibition Act. The petitioner has filed a petition in Cr.M.P.No.6990 of 2021 before the learned Judicial Magistrate No.II, Virudhunagar. The petition was dismissed by the trial Court. Against which, the petitioner has preferred this Criminal Revision Case.

3.On the side of the petitioner, it is stated that under Section 14(4) of Tamil Nadu Prohibition Act, the confiscation can be done only after the Court convicted the petitioner. The commission of offence is to be decided by the Court. The power is vested with the Court and not with the authorities to decide whether the commission of offence is made out. On the date of FIR itself, the chargesheet was filed. Instead of waiting for the decision of the Court, the respondent has no authority to pass an order of confiscation and prayed the vehicle to be returned to the petitioner.



4. On the side of the petitioner, it is further stated that the vehicle was left in the open space from 15.10.2021 onwards. The value of the vehicle will be deteriorated on the exposure to the climatic conditions and prayed the vehicle to be returned to the petitioner for interim custody.

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5. On the side of the respondent, it is stated that the Deputy Superintendent of Police is having the power to confiscate the vehicle. A 1st show cause notice was sent to the petitioner. The petitioner appeared for enquiry and prayed not to confiscate the vehicle till he obtained an order from the Court. When the second show cause notice was sent to the petitioner, he did not appear for the enquiry. The vehicle was confiscated on 13.11.2021. The petitioner is having the right to file an appeal before the District Sessions Court and prayed the petition to be dismissed.

6. The learned counsel for the petitioner would rely upon the judgment of this Court in the case of **Thavasilingam v. State through the Inspector of Police** in **Crl.R.C. (MD)No.404 of 2020**.

7. The petitioner filed a petition under Section 451 of Cr.P.C., for return of the vehicle for interim custody. The order for return of the vehicle for interim custody can be passed by the learned Judicial Magistrate subject to the order passed in the confiscation proceedings. Now the confiscation proceedings initiated by the respondent police was over and the order for confiscation was already passed by the Deputy Superintendent of Police. It is seen that the citation referred by the petitioner is the order of this Court wherein confiscation proceedings is pending. Since confiscation proceedings was over in this case, the citation referred is not applicable to the present facts of the case. As per confiscation proceedings, the petitioner is at liberty to file an appeal before the District Sessions Court.

8. In view of the above, the petitioner is at liberty to approach appropriate forum. With the above observation, this Criminal Revision Case is disposed of.

Sd/-

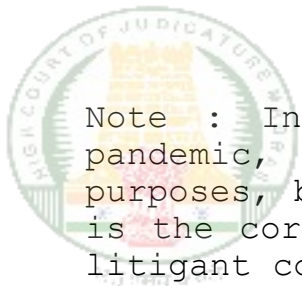
Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

Mrn



Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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- To
- 1.The Judicial Magistrate No.II,
Virudhunagar.
 - 2.The Inspector of Police,
Aviyur Police Station,
Virudhunagar District .
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl. R.C.(MD)No.930 of 2021
06.01.2022

BK(CO)
GC(20.01.2022) 3P 4C