



Crl.R.C.No.361 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.361 of 2023

D.Senthilraja

... Petitioner

Vs.

The State rep by the Inspector of Police,
Sulur Police Station,
Coimbatore District.
(Crime No.655 of 2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order passed by the learned Judicial Magistrate, Sulur in Crl.M.P.No.563 of 2023 dated 13.02.2023.

For Petitioner : Mr.W.Camyles Gandhi

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl.Side)



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ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Judicial Magistrate, Sulur in Crl.M.P.No.563 of 2023 dated 13.02.2023.

2.It is the case of the prosecution that on 04.11.2022, at about 05.30 hours, upon secret information, the respondent Police recovered tobacco products, which were being transported illegally in an Auto Rickshaw bearing Registration no.TN-37-CM-5458. The respondent Police registered a case in Crime No.655 of 2022 for the offences under Sections 24(1) of COTPA Act, 328 of Indian Penal Code, for illegal transportation of Tobacco products and the vehicle was seized. The petitioner is the owner of the above said vehicle and he filed a petition in C.M.P.No.563 of 2023 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 13.02.2023 by the Court below considering the nature of offences and the quantity of the banned tobacco products seized from the



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vehicle. Hence, challenging the above said order, the petitioner filed the present Revision case.

3.The learned counsel for the petitioner has submitted that the petitioner is A4 in this case. The petitioner is the owner of vehicle namely Auto Rickshaw bearing Registration no.TN-37-CM-5458. The respondent police registered a case against the accused persons namely Senthilkumar, Mehboobbasha, Jayaprakash and Senthilraja (A4)/ the petitioner herein in Crime No.655 of 2022 for the offences under Sections 24(1) of COTPA Act, 328 of Indian Penal Code and seized the Auto rickshaw from the accused. The petitioner is not involved in any previous offence and he is no way connected with the present case as alleged by the prosecution. He further submitted that if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle and its value gets diminished. He further submitted that the vehicle is not involved in any case similar in nature and the petitioner is ready to furnish appropriate guarantee as well as security for return of vehicle and also he will produce the vehicle, as and



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when required either before the respondent police or before the Trial Court.

Hence, he would urge this Court to order return the vehicle to the petitioner while setting aside the order passed by the Court below.

4. The learned Government Advocate (Crl.Side) submitted that, the petitioner is the owner of the vehicle namely Auto Rickshaw bearing Registration no.TN-37-CM-5458 and the petitioner along with other accused were transporting Tobacco products illegally in the vehicle and hence the respondent Police seized the Auto Rickshaw from the accused. Since, the petitioner in this case is arrayed as A4 and since the above said Auto Rickshaw was used to transport the Tobacco products illegally, it was seized and hence, he objected to return the vehicle to the petitioner.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and I have perused the materials on record.



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6.A perusal of the records shows that, a case in Crime No.655 of 2022 was registered by the respondent Police for the offences under Sections 24(1) of COTPA Act, 328 of Indian Penal Code, for illegal transportation of Tobacco products and the accused were arrested and the vehicle was seized. The petitioner is the owner of the above said vehicle and he filed a petition in C.M.P.No.563 of 2023 before the Trial Court to release the vehicle to him. The Trial Court dismissed the petition filed by the petitioner, on the ground that the vehicle was used illegally to transport the Tobacco products which are banned one and hence, the learned Judge refused to grant interim custody of the vehicle.

7. At this juncture, it is relevant to rely upon a decision of the Hon'ble Supreme Court in ***“Sunderbhai Ambalal Desai and others Vs. State of Gujarat in Special Lave Petition (Crl.)2745 of 2022 dated 01.10.2002”*** wherein, the relevant portion is extracted hereunder.

Vehicles

17. In our view, whatever be the situation, it is of no use to keep



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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.

*18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company, then insurance company be informed by the Court to take possession of the vehicle, which is not claimed by the owner or a third person. If insurance Company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. **In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.***

Therefore, as per the ratio laid down by the Hon'ble Apex Court, this Court is of the view that, keeping the vehicle idle in the open space, will diminish its nature and lose its value and no purpose will be served. As such, considering the nature of offence, this Court is inclined to allow the Revision Petition.



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8. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the learned Judicial Magistrate, Sular is set aside. The respondent police is directed to return the vehicle to the owner of the vehicle on 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 learned Judicial Magistrate, Sular.
- 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.

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Index: Yes/No
Internet: Yes/No
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Issue on 17.03.2023

V.SIVAGNANAM, J.,
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To

1. The Judicial Magistrate, Sulur.
2. The Inspector of Police,
Sulur Police Station,
Coimbatore District.
(Crime No.655 of 2022)
3. The Public Prosecutor, Madras High Court.

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