



Crl.R.C.No.832 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.832 OF 2023

P. Arunachalam

.. Petitioner

Vs

The State,
represented by the Inspector of Police,
Karumathampatty Police Station,
Coimbtore District

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w.401 Cr.P.C. to set aside the order of dismissal dated 01.09.2022 made in CMP.No.2551 of 2022 on the file of the Judicial Magistrate, Sulur, Coimbatore District, by allowing the Criminal Revision.

For Petitioner : Mr. M. Prakash Raj

For Respondent : Mr. R. Vinothraja, GA (crl.side)

ORDER



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This Criminal Revision case has been filed challenging the order of dismissal dated 01.09.2022 passed by the Judicial Magistrate, Sulur in Cr.M.P.No.2551 of 2022 seeking interim custody of the vehicle viz.,Ashok Leyland Omni Bus bearing Regn.No.PY01BY3146 to the petitioner.

2.The fact of the case is that the petitioner is the owner of the Ashok Leyland Omni Bus bearing Regn.No.PY01BY3146. The respondent police registered a case in Cr.No.135/2022 against one Murugan and Selvam for the offence under sections 7(1) and 20(2) of Cigarette and other Tobacco Products Act 2003 r/w.section 328 of IPC alleging that the accused persons were indulged in illegal transportation of 553 Kgs of banned tobacco products from Hosur to Coimbatore. Pursuant to which, they have seized the above said vehicle on 23.02.2022 alleging that the vehicle has been engaged in illegal transportation of tobacco. Since the petitioner is the owner of the vehicle, he filed a petition in C.M.P.No.2551 of 2022 before the Judicial Magistrate, Sulur, seeking return of vehicle. The trial court dismissed the petition considering the nature of the offence and quantity of the banned tobacco



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3.The learned counsel for the petitioner submitted that the vehicle is not involved in any previous case of offence of similar in nature. The vehicle has been kept under the custody of the respondent police from 23.02.2022 and if the vehicle is kept in open space under unconditional weather conditions, the same would depreciate its value and user capacity.

4. Further, the learned counsel for the petitioner contended that no purpose will be served in keeping the vehicle under the custody of respondent police and if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle. The petitioner is ready to give appropriate guarantee as well as security for return of vehicle and also he will produce the vehicle, as and when required either before the respondent police or before the trial court. Hence, he prayed to return the vehicle and he is ready to obey any condition imposed on him by this Court.

5. The learned Govt. Advocate (Crlside) objected to return of vehicle,



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stating that the vehicle was used for illegal transportation of tobacco and if the vehicle is ordered to be returned, he may use the vehicle for committing the same offence. He fairly conceded that the vehicle is not involved in any previous case of similar in nature.

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

7. A perusal of the records would reveal that the respondent police, on 23.02.2022, on receiving secret information regarding illegal transportation of tobacco products, conducted police patrolling in Kaniyur Tollgate near Haryana Dhaba. Whiles, they intercepted an Omni Bus bearing Regn.No.PY01BY3146 and on seeing the police, the driver of the vehicle absconded from the spot. The respondent police, caught the accused persons stood nearby the vehicle, enquired them and sized the banned tobacco products from the abovesaid vehicle. Pursuant to which, they have seized vehicle involved in the offence and registered a case against the owner of the vehicle in Cr.No.135 of 2022 for the offence under sections 7(1) and 20(2) of Cigarette and other Tobacco Products Act 2003 r/w. section 328 of IPC. The



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petitioner is the owner of the Omni Bus bearing Regn.No.PY01BY3146. After seizure, the vehicle has been kept under custody of the respondent police from 23.02.2022 onwards.

8. Perusal of records would further reveal that the petitioner is the owner of vehicle and he is ready to give guarantee and security for returning the vehicle. If the vehicle is being kept in an open space, it would cause damage to the vehicle and the value of the vehicle is diminished and continuing to keep the vehicle in open air would make the vehicle unusable. Further, the Honourable Supreme Court in the case of ***Sunderbhai Ambalal Desai and others Vs.State of Gujarat in Special Leave Petition (crl.) 2745 of 2022*** dated 01.10.2002, has held that in order to protect the property, the Apex Court has directed to handover the seized articles to the owner on proper Panchnama.

9. Considering the above aspects and also the ratio laid down by the Hon'ble Apex Court, this Court is of the view that keeping the vehicle idle in



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the open space, will diminish its nature and lose its value and no purpose will be served. As such, considering the nature of offence and also taking into account the fact that the vehicle is not involved in any other case similar in nature previously, this Court is inclined to allow the Criminal Revision Case.

10. In the result, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The interim custody of the vehicle viz., Ashok Leyland Omni Bus bearing Regn.No.PY01BY3146 is ordered to be handed over to the petitioner, who is 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 execute a personal bond for a sum of Rs.20,00,000/-(Rupees twenty lakhs only) before the Judicial Magistrate, Sulur;
- iii. The abovesaid court is directed not to insist upon the petitioner for producing solvency certificate while releasing the vehicle.
- iv. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.



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- v. the petitioner may take photograph of the vehicle and certified under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.
- vi.the petitioner shall not alienate or encumber the vehicle in any manner;
- vii.the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future;
- viii.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

01.06.2023

msr

Index: yes/no

Internet:yes/no

To

1. The Judicial Magistrate, Sulur
- 2.The Inspector of Police,
Karumathampatty Police Station,
Coimbatore District.
3. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.

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