



CRL.R.C.NO.733 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.733 OF 2023

Rajasekaran

.. Petitioner

Vs.

State rep. By
The Inspector of Police
Sulur Police Station
Coimbatore District.
Crime No.709 of 2022

.. Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C. to set aside the order passed in CrI.M.P.No.998 of 2023 on the file of learned Judicial Magistrate Court, Sulur, dated 14.03.2023.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.R.Vinothraja
Government Advocate (Criminal Side)



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ORDER

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This Criminal Revision Case has been filed challenging the order of dismissal dated 14.03.2023 passed by the learned Judicial Magistrate, Sulur, in C.M.P.No.998 of 2023, seeking interim custody of the vehicle EECO OMNI Car bearing Registration No.TN37-DK-5272, to the petitioner.

2.The case of the prosecution is that the petitioner is the owner of the vehicle viz., EECO OMNI Car bearing Registration No.TN37-DK-5272. The respondent police registered a case in Crime No.709 of 2022 for the offence under Section 24(1) of Cigarette and Other Tobacco Products Act, 2003 and Section 328 IPC against four accused persons. On 07.12.2022 at about 11.00 hours, on receipt of secret information about loading of Tobacco products in EECO OMNI Car bearing Registration No.TN37-DK-5272 and two wheeler bearing Registration No.TN38-BH-1106, the respondent police went to the scene of occurrence and on seeing the police, the accused persons trying to escape from that place and immediately, the respondent caught hold of the accused persons and found that they were in possession of 1532 Kgs of banned Tobacco products without any license. Subsequently, the respondent



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has seized the above said vehicles. Since the petitioner is the owner of the vehicle viz., EECO OMNI Car bearing Registration No.TN37-DK-5272, he filed a petition in C.M.P.No.998 of 2023 before the learned Judicial Magistrate Court, Sular, for return of the vehicle and the same dismissed by the Trial Court on 14.03.2023.

3.The learned counsel for the petitioner submitted that the petitioner is not an accused and that the vehicle is not involved in any previous case of offence of similar in nature 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 useful 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.

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5.The learned Government Advocate (Criminal Side) objected to return of vehicle, stating that the vehicle was used for illegal transportation of Tobacco products and Cigarettes and if the vehicle is ordered to be returned, he may use the vehicle for committing the same offence. He fairly conceded that the petitioner is not an accused and 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 receiving secret information regarding loading of Tobacco products, conducted police patrolling and seized the EECO OMNI Car bearing Registration No.TN37-DK-5272, in possession of 1532 Kgs of banned Tobacco products without any license sand and registered a case against the owner of the vehicle in Crime No.709 of 2022 under Section 24(1) of Cigarette and Other Tobacco Products Act, 2003 read with 328 IPC. The



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petitioner is the owner of the EECO OMNI Car bearing Registration No.TN37-DK-5272.

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 Hon'ble Supreme Court in ***SUNDERBHAI AMBALAL DESAI AND OTHERS VS. STATE OF GUJARAT [SPECIAL LEAVE PETITION (CRL.) NO.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 the open space, will diminish its nature and lose its value and no purpose



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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 EECO OMNI Car bearing Registration No.TN37-DK-5272 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.5,00,000/- (Rupees Five Lakhs only) before the Judicial Magistrate Court, 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.

(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.



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Index : Yes/No

Internet : Yes/No

TK

To

1.The Judicial Magistrate
Judicial Magistrate Court
Sulur.

2.The Inspector of Police
Sulur Police Station
Coimbatore District.

3.The Public Prosecutor
High Court of Madras.



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V. SIVAGNANAM, J.

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