



Crl.R.C. No.1283 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.R.C.No.1283 of 2023

Chinnaiyan

...Petitioner

Vs.

State represented by its
The Inspector of Police
PEW, Kallakurichi Police Station
Kallakurichi District
(Cr. No.183/2023)

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. praying to set aside the order dated 22.06.2023 in Crl.M.P. No.2160/2023 in Crl.M.P. No.395/2023 on the file of the learned Judicial Magistrate No.I, Kallakurichi, and to grant interim custody of vehicle bearing registration number TN 54 X 2338 Mahindra Maxx Pickup.

For Petitioner : Mr.R. Saravanapandiyan

For Respondent ; Mr. R.Vinothraja, GA (Crl. Side)



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ORDER

Challenging the orders dated 22.06.2023 in Crl.M.P. No.2160/2023 in Crl.M.P. No.395/2023, on the file of the learned Judicial Magistrate No.I, Kallakurichi, which was filed for the return of a vehicle, namely, Mahindra Maxx PickUp bearing No.TN 54 X 2338 that was seized in connection with Cr.No.183 of 2023 in PEW, Kallakurichi Police Station, the present petition is filed.

2. The case of the prosecution is that when the Inspector of Police, PEW, Kallakurichi Police Station, along with his police personnels were on routine vehicle check up on 16.05.2023 at about 1 p.m., they intercepted a vehicle, namely, Mahindra Maxx PickUp bearing No.TN 54 X 2338, and found the accused transporting 25 litres of arrack. Immediately the accused was arrested and the contraband along with the vehicle were seized. Thereafter, an FIR in Cr.No.183 of 2023 was registered by the Inspector of Police, PEW, Kallakurichi Police Station, for the offences punishable under Sections 4(1)(a) and 4(1-A) of



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Tamilnadu Prohibition Act, against the accused and he was produced before the Judicial Magistrate No.I, Kallakurichi, and was remanded to judicial custody on the same day.

3. Thereafter the present petitioner, who is said to be the owner of the vehicle, had filed a petition in Crl.M.P. No.2160/2023 in Crl.M.P. No.395/2023 under Sections 451 & 457 Cr.P.C., before the Judicial Magistrate Court.No.I, Kallakurichi, to grant interim custody of the above mentioned vehicle and the same was dismissed on the ground that since Section 4(1-A) of TNP Act is triable by court of sessions, the property cannot be handed over to the petitioner. Aggrieved over the same, the present petition is filed.

4. Heard Mr.R. Saravanapandiyan, learned counsel for the petitioner and Mr. R.Vinothraja, GA (Crl. Side) for the respondent.

5. Mr.R. Saravanapandiyan, learned counsel for the petitioner contended that the present petitioner is not involved in the offence in



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Crime No.183/2023 and that if the seized vehicle is kept in open space in the police station, the value of the same would get diminished over a period of time. He therefore, prayed for return of the vehicle.

6. Per contra, Mr. R.Vinothraja, Government Advocate (Crl. Side) appearing for the respondent would contend that the confiscation proceedings had been initiated and the present petitioner has also been issued with showcause notice in this regard.

7. At this juncture, it is pertinent to point out the decision of the Hon'ble Supreme Court of India in ***State of M.P. Vs. Uday Singh [(2020) 12 SCC 733]***, in which it has been held as follows:

“29.4.....The jurisdiction under Section 451 CrPC was not available to the Magistrate, once the authorised officer initiated confiscation proceedings.”

In the instant case, the confiscation proceedings have already been initiated. Therefore, in view of the abovesaid decision, the petitioner is not entitled for the interim custody of the vehicle as prayed for by him.



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However, It is seen from the records that the order of the trial court was passed on 22.06.2023 and till date, the respondent has not completed the confiscation proceedings. Therefore, I am inclined to dispose off the Criminal Revision Case on the following terms.

- i. Since the confiscation proceedings are pending, the petitioner is not entitled for return of the vehicle;
- ii. The respondent is directed to complete the confiscation proceedings within two months from the date of receipt of a copy of this order;
- iii. If the confiscation proceedings are not completed within the date stipulated above, then the petitioner will be entitled for return of the custody of the vehicle on the following conditions:
 - a) The order of the learned Judicial Magistrate No.I, Kallakurichi, in Crl.M.P. No.2160/2023 in Crl.M.P. No.395/2023, dated 22.06.2023, is set aside.
 - b) The petitioner will be entitled for return of the vehicle, namely, Mahindra Maxx PickUp bearing No.TN 54 X 2338,



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- c) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove its ownership and the learned Judge, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle;
- d) The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over;
- e) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the court below and as well as by the District Collector of the District or authorized officer in that behalf by the Government.
- f) The petitioner shall participate in the confiscation proceedings, if any, initiated and shall produce the vehicle before the confiscation authority. This order is subjected to the confiscation proceedings.



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g) The petitioner shall not indulge in the similar offence either by using the present vehicle or any other vehicle. If the petitioner is found to be involved in any of similar offence in future either by way using the present vehicle or through any other vehicle, this order of returning the present vehicle (Mahindra Maxx PickUp bearing No.TN 54 X 2338), shall stand automatically vacated, and this vehicle will be again seized by the respondent/police and produce before the Court concerned.

25.07.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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R. HEMALATHA, J.
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To

The Judicial Magistrate No.I, Kallakurichi,

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