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Crl.R.C.No.1819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1819 of 2023

Sathiyaraj

... Petitioner

Vs.

The State rep by
The Inspector of Police,
Prohibition Enforcement Wing,
Nannilam Police Station,
Nannilam,
Thiruvarur District.

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w. 401 of Cr.P.C, prayed to allow the above Criminal Revision Petition and thereby set aside the order passed in Crl.M.P.No.3175 of 2023 by the District Munsif cum Judicial Magistrate Court, Nannilam dated 01.07.2023 thereby directing the respondent police to release TVS Star City+BS III bearing No. TN-50-Q-8823.

For Petitioner : Mr.D.Arun

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Revision Case has been filed to set aside the order passed in Crl.M.P.No.3175 of 2023 by the learned District Munsif-cum-Judicial Magistrate, Nannilam dated 01.07.2023 thereby directing the respondent police to release TVS Star City plus BS III bearing No. TN-50-Q-8823.

2. The petitioner, who is the owner of TVS Star City Plus BS III bearing Registration No.TN-50-Q-8823, filed a return of property petition in Cr.M.P.No.3175 of 2023 before the learned District Munsif-cum-Judicial Magistrate, Nannilam, who dismissed the same by an order dated 01.07.2023, against which, the present petition has been filed.

3. The contention of the petitioner is that the respondent police registered a case against the petitioner for offence under Section 4(1)(a) of Tamil Nadu Prohibition Act in Crime No.392 of 2023 on 31.05.2023 on the



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allegation that the petitioner was found in possession of Copper – 4 Brandy bottles each containing 180 ml of brandy.

4. According to the petitioner, the petitioner was returning to his house from his work place. On the way, a passerby asked for lift and the petitioner took him in his bike. At that time, the respondent police stopped the bike and questioned them, the passerby suddenly ran away from the spot. Thereafter, a case has been registered against the petitioner for possession and transporting of liquor bottles.

5. The learned counsel for petitioner submits that the petitioner using this vehicle for his work. Due to the seizure of the vehicle, he is unable to get any earnings. Further the vehicle has been kept in open yard exposing to vagaries of weather, further detention of the vehicle would only make the vehicle unusable and as a scrap. He further submitted that according to Tamil Nadu Liquor (Possession for Personal Consumption) Rules, 1996, a person is



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entitled to possess 4.5 litres of Indian made foreign spirits. The case of the prosecution is that the petitioner was found in possession of Copper - 4 brandy bottles, each bottle containing 180 ml, totally 720 ml. of brandy, which is a permitted quantity. Hence, there is no violation of rules. Further, learned counsel relied upon the order passed by this Court in Crl.R.C.No.1704 of 2023, wherein, this Court granted return of vehicle in similar situation. Accordingly, he prays for return of vehicle.

6. Learned Additional Public Prosecutor submits that on 31.05.2023 at about 7.00 p.m., the respondent police conducted vehicle check up near Kandhankudi check post. At that time, the petitioner, who came in his bike bearing Registration No.TN-50-Q-8823, on seeing the police stopped the vehicle and attempted to flee away. The petitioner was caught by the police. Thereafter the vehicle was seized, in which, Copper-4 brandy bottles each containing 180 ml, found in his possession and later it was destroyed. Thereafter mahazar prepared and the accused produced before the respondent



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police along with the vehicle. He further submitted that the Prohibition Officer by notice dated 08.06.2023 informed the petitioner about the initiation of the confiscation proceedings under Section 14 of the Tamil Nadu Prohibition Act. He further submitted that the vehicle is now in the possession of the respondent police. Considering the fact that confiscation proceedings has been initiated, the trial Court had rightly dismissed the return of property petition. Hence, he prays for dismissal of the above petition.

7. Considering the submissions made and on perusal of the material it is seen that the petitioner was found in possession of Copper – 4 brandy bottles each containing 180 ml, totally 720 ml of brandy. As per Tamil Nadu Liquor (Possession for Personal Consumption) Rules, 1996, a person is entitled to possess 4.5 litres of Indian made foreign spirits. In view of this admitted position, the case against the petitioner is a questionable one. Thus detention of vehicle by the respondent police is not proper.



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8. It is not in dispute that the petitioner is the owner of the vehicle, viz., TVS Star City plus BS III bearing No.TN-50-Q-8823. It is seen that from the date of registration of FIR, the vehicle is kept in open space and thereby, the value of the vehicle is getting diminished. The Hon'ble Apex Court in the case of “*Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290*”, had given guidelines in the cases of return of property to the owner.

9. Further, this Court in the case of “*Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station, Nagapattinam District in Crl.R.C.No.501 of 2011*”, considered the case of “*David Vs. Sakthivel, Inspector of Police-cum-Station House Officer reported in 2010 1 MLJ (Crl.) 929*” and ordered return of seized vehicle to the owner, which is being consistently followed, despite initiation of the confiscation proceedings.



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10. Further, the vehicle is kept in open yard exposing to vagaries of weather, further detention would cause damage to the vehicle, in result, the value of the vehicle will get diminished and vehicle would become immobile.

11. In view of the aforesaid reasons, this court is inclined to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Nannilam made in Cr.M.P.No.3175 of 2023, dated 01.07.2023 and accordingly, the Criminal Revision Case is allowed.

12. Since the vehicle is in possession of the respondent police, the respondent police is directed to return the vehicle TVS Star City plus BS III bearing No.TN-50-Q-8823 to the petitioner, on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only), with two sureties each for a like sum to the satisfaction of the learned District Munsif-cum-Judicial Magistrate, Nannilam;



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(ii) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove his ownership.

The learned Magistrate shall peruse the RC book and other records, retain xerox copy of the same and return the same to the petitioner with a view to use the vehicle;

(iii) The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over;

(iv) 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.

(v) The petitioner shall participate in the confiscation proceedings if any initiated and shall produce the vehicle before



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the confiscation authority. This order is subject to the outcome
of the confiscation proceedings.

01.11.2023

Index : Yes/No

Speaking order/Non-speaking order

Neutral citation: Yes/No

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To

- 1.The Inspector of Police,
Prohibition Enforcement Wing,
Nannilam Police Station,
Nannilam,
Thiruvarur District.
- 2.The District Munsif-cum-Judicial Magistrate,
Nannilam.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR,J.

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