



WEB COPY



Crl.R.C.No.1732 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1732 of 2023

Tamilarasan

... Petitioner

Vs.

State by

The Inspector of Police,
Jolarpet Police Station,
Tirupattur District.
(Crime No.239/2023)

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records of the order passed learned Judicial Magistrate-I, Tirupattur in Crl.M.P.No.9545 of 2023 on 18.08.2023 set aside the same and order to return vehicle namely Honda Activa bearing registration No.TN 83 MA 1203 to the custody of the petitioner herein.

For Petitioner	:	M/s.Umme Ruman for Mr.D.Bennington
For Respondent	:	Mr.A.Damodaran, Additional Public Prosecutor

ORDER

The petitioner/accused is the owner of the vehicle viz., Honda Activa bearing Registration No.TN 83 MA 1203 has filed a petition in C.M.P.No.9545 of 2023 for return of vehicle, which was seized in connection with Crime No.239 of 2023 on the file of the respondent Police. The learned Judicial



Magistrate No.I, Tirupattur, by order, dated 18.08.2023 dismissed the petition, against which, the petitioner before this Court.

2.The case of the prosecution is that on 08.07.2023, at about 16.00 hours, when the Sub Inspector of Police along with two Grade-I Constables were on duty inspecting the vehicles, the accused came in the above said vehicle and on seeing the Police, he stopped the vehicle and attempted to flee from the scene. The Police personnels secured him and made an enquiry. He disclosed his identify as Villalan. On inspecting the vehicle, 180 ml of 25 Diamond XXX Rum found and seized along with the vehicle. Since the accused has no license for transporting the said liquor bottles, the respondent Police registered a case in Crime No.239 of 2023, for offence under Sections 4(1)(a) and 4(1)(h) of the Tamil Nadu Prohibition Act, 1937.

3.The learned counsel for the petitioner submitted that the petitioner is the owner of the said vehicle and he has no way connected with the alleged incident. Due to medical emergency, the accused obtained the petitioner's vehicle from his mother. The petitioner neither involved in this case nor done any illegal act and he is only the owner of the vehicle. The petitioner filed a petition under Sections 451 and 457 Cr.P.C., before the learned Judicial



Magistrate No.I, Tirupattur on the ground that the petitioner was need of his vehicle. In support of ownership of vehicle, the petitioner produced the RC book. Since the prosecution made its objection that the investigation is yet to be completed and notice served to the owner of the vehicle for confiscation proceedings, the learned Magistrate dismissed the petition.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the confiscation proceedings already initiated by the Prohibition Officer and the notice served to the petitioner. The initiation of the confiscation proceedings is reflected in the order of the lower Court. The learned Additional Public Prosecutor apprehends that if the vehicle is returned to the petitioner, he would continue to indulge in such activities. It would be appropriate to await the outcome of the confiscation proceedings. The grounds raised by the petitioner herein are to be raised before the confiscation authority. In the event of the petitioner claimed to be genuine, appropriate orders can be obtained. At this stage, the petitioner cannot approach this Court directly.

5.This Court considered the rival submissions and perused the materials available on record.



6.It is not in dispute that the petitioner is the owner of the vehicle, viz., Honda Activa bearing Registration No.TN 83 MA 1203. It is seen that from the date of registration of FIR, the vehicle is kept in open space exposing to vagaries of weather 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.

7.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.

8.On a demeanour, if it is considered that the vehicle has been used to transport the liquor and the same is in violation of the Tamil Nadu Prohibition Act, 1939, as per Rule 2 of the Tamil Nadu Liquor (Possession for Personal Consumption) Rules, 1996 the same is permitted. The petitioner transported the liquor not in excess of the specified quantity (180 ml of 25 bottles = 4.5



litres). For better appreciation, the said Rule 2 is as follows:

WEB COPY

“2. Possession of liquor for personal consumption. - No person will possess the liquor mentioned in column (1) of the Table below, which have already been specified under sub-clause (i) of clause (i) of sub-section (1) of section 4 of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937) for personal consumption, in excess of the quantity specified in the corresponding entries in column (2) thereof:-

TABLE

<i>Liquor</i>	<i>Quantity</i>
<i>(1)</i>	<i>(2)</i>
<i>(1) Indian made foreign spirits</i>	<i>4.5</i>
<i>(2) Foreign Liquor</i>	<i>4.5</i>
<i>(3) Beer</i>	<i>7.8</i>
<i>(4) Wine</i>	<i>9”</i>

9.Now, the vehicle is kept in open 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.

10.In view of the aforesaid reasons, this court is constrained to set aside the order passed by the learned Judicial Magistrate No.I, Tirupattur made in C.M.P.No.9545 of 2023, dated 18.08.2023 and the criminal revision is allowed.



11.The learned Judicial Magistrate No.I, Tirupattur is directed to return the vehicle Honda Activa bearing Registration No.TN 83 MA 1203 to the petitioner, on the following conditions:-

(i)The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Tirupattur;

(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.



CrI.R.C.No.1732 of 2023

WEB COPY

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

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

13.10.2023

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes/No

vv2

To

1.The Judicial Magistrate Court No.I,
Tirupattur.

2.The Inspector of Police,
Jolarpet Police Station,
Tirupattur District.

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.1732 of 2023

M.NIRMAL KUMAR, J.

vv2

Crl.R.C.No.1732 of 2023

13.10.2023