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Crl.R.C.No.2019 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2019 of 2023

Durairaji

... Petitioner

Vs.

The State by
The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram District
in Crime No.988 of 2023

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w. 401 of Cr.P.C, prayed to set aside the judgment passed by the learned Judicial Magistrate No.I, Villupuram in C.M.P.No.9400 of 2023 dated 08.11.2023.

For Petitioner : Mr.S.Saravana Kumar

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 dated 08.11.2023 passed by the learned Judicial Magistrate No.I, Villupuram in C.M.P.No.9400 of 2023.

2. The petitioner in his two wheeler TVS Jupiter bearing Registration No.TN32-AM-2925 was seized by the respondent police in Crime No.988 of 2023 for the offence under section 4(1)(a) of TNP Act.

3. The case of the prosecution is that the petitioner was sitting on his two wheeler near his house. The respondent police on suspicion enquired the petitioner. During the search, it was found that in a plastic bag, there were six rum bottles of 360 ml each and ten rum bottles of 180 ml each; totally 16 bottles of liquor from other state. Thereafter, the liquor bottles and the vehicle were seized and the petitioner was also arrested.



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4. The contention of the petitioner is that the petitioner was sitting on his two wheeler near his house and the respondent police had projected a false case against him as if he was concealing and carrying liquor bottles of other state. In this case, the liquor bottles were not seized in the presence of independent witnessess and there is no mahazar or any record as to how the liquor bottles were seized and destructed. Since the petitioner had some previous cases, a false case has been foisted against him. In fact, the petitioner is taking steps and defending the cases against him, which got the police enraged against the petitioner's resistive nature and implicated in the above case. He further submitted that the petitioner is using the said vehicle for all his daily activities.

5. Learned Additional Public Prosecutor on the other hand strongly opposed the contention of the petitioner stating that the liquor bottles had been found in possession of the petitioner and there are a total of six previous



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cases against the petitioner, of which, two are similar in nature. In one of the previous case, he admitted his guilt and in another case, further action dropped. There cannot be any reason for closing the case as further action is dropped, if the police are enraged against the petitioner. He further submitted that in this case, liquor bottles as well as the vehicle produced before the Judicial Magistrate by Form-95. Now the confiscation proceedings initiated. The petitioner to appear before the confiscation authority and to put forth his case. The lower court recorded about the confiscation proceedings, pending before the ADSP, Villupuram and dismissed the petition.

6. Considering the submission and perusal of the materials, it is seen that the petitioner is the owner of the vehicle which is not in dispute. Likewise, the petitioner was found sitting on his two wheeler near his house. The seizure of liquor bottles is a matter of fact to be decided during trial, Whether it has been in the presence of independent witness or police witness or seizure, production and destruction have been made in the manner known



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to law can be decided in the trial. In any event, the initiation of confiscation proceedings would not deny the petitioner for having his vehicle as interim custody.

7. 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.

8. 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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9. 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, Villupuram made in Cr.M.P.No.9400 of 2023, dated 08.11.2023 and the criminal revision is allowed.

11. The learned Judicial Magistrate No.I, Villupuram is directed to return the vehicle TVS Jupiter bearing registration No.TN32-AM-2925 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



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satisfaction of the learned Judicial Magistrate No.I, Villupuram;

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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 originals to the petitioner;

(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 the confiscation authority.

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



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Index : Yes/No

Speaking order/Non-speaking order



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To

1.The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram District

2.The Judicial Magistrate No.I, Villupuram.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR,J.

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