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Crl.R.C.No.1706 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.1706 of 2022

Sekar

... Petitioner

Vs.

The Inspector of Police,
K-6, T.P.Chathiram Police Station,
Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 397 r/w. 401 of Cr.P.C. to set aside the order dated 01.12.2022 made in Crl.M.P.No.31587 of 2022 on the file of the Metropolitan Magistrate-V, Egmore, Chennai and allow the criminal revision.

For Petitioner : Mr. D. Prabu

For Respondent : Mr.V. Meganathan
Govt. Advocate (Crl.Side)



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ORDER

This Revision is filed challenging the impugned order passed in Crl.M.P.No.31587 of 2022, dated 01.12.2022 by the Metropolitan Magistrate-V, Egmore, Chennai.

2. The learned counsel for the petitioner submitted that the petitioner is A4 in the case registered by the respondent police in Crime No.178 of 2022 for the offences punishable under sections 353 and 506(i) IPC and sections 6(b) and 24(i) of Cigarette and other Tobacco Products Act on 30.08.2022 alleging that he is indulged in illegal selling of 100 packets of Mava. He was arrested by the respondent police based on the confession of A1, who identified the petitioner as purchaser of banned Tobacco products. While arresting the petitioner, the respondent police recovered Rs.450/- and also seized his two-wheeler vehicle bearing Registration No.TN-01-BK-8932 without any contraband. The petitioner, being the the owner of the seized vehicle filed Crl.M.P.No.31587 of 2022 before the Metropolitan



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Magistrate-V, Egmore, Chennai, who, by the order impugned herein, dismissed the petition on the ground that the petitioner may use his vehicle for doing the very same offence again.

3. The learned counsel further submitted that the learned Magistrate has failed to consider that there was no contraband recovered either from the petitioner or from his two-wheeler to establish the involvement of petitioner as well as his two-wheeler in the alleged offence. Moreover, the vehicle has been stationed in an open yard and has been kept idle and uncared under all weather conditions and natural calamities, due to which, the value of the vehicle will be drastically depreciated. Further, the petitioner is ready to abide by any condition that may be imposed on him for the release of vehicle and give an undertaking that he will not involve the vehicle in similar type of offences again. Hence he prayed for granting interim custody of the vehicle.

4. When the matter was taken up, the learned Govt. Advocate



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(crl.side) submitted that the respondent police has registered a case against this petitioner/A4 along with 3 others in Crime No.178 of 2022. The respondent police seized the vehicle from the petitioner/accused and also recovered Rs.450/-, which is alleged to be the selling price of Mava. Now the vehicle has been produced before the Judicial Magistrate and it has been received under property No.1459 of 2022 on 03.09.2022 and the vehicle has been handed over to the police for safe custody. He further submitted that if the vehicle is returned to the petitioner, he may re-use the same for committing further criminal activities. Thus, he prayed for dismissal of this petition.

5. I have considered the arguments advanced on both sides and perused the materials available on record.

6. On perusal of records, the fact reveals that the petitioner is an accused in Crime No.178 of 2022. The respondent police registered a case against this petitioner besides three accused for having committed the offences punishable under sections under sections 353 and 506(i) IPC and



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sections 6(b) and 24(i) of Cigarette and other Tobacco Products Act. A perusal of records would further reveal that on 30.08.2022 at about 8.45 a.m., while the respondent police was patrolling near Pulla Avenue, East Club Road, Kamaraj Nagar, Rani Annanagar at about 9 a.m., a two wheeler bearing Registration No.TN-10 AX 0891 was parked there and on seeing the police, A1 attempted to escape from the spot and while he was intercepted and enquired, he disclosed that his name was Rajesh Kumar and the police seized from his vehicle 100 packets of Mava along with Rs.6750/- being selling price of mava. Thereafter, on enquiring A1, they found that this petitioner/A4 also is in possession of Rs.450/- being the selling price of 50 packets of mava and they also seized his two wheeler bearing Registration No.TN-01-BK-8932 used for selling of mava. The respondent seized two vehicles and arrested four persons and remanded them to judicial custody and the vehicles have been produced before the V Metropolitan Magistrate, Egmore which were received in B.No.1451 of 2022 on 3.9.2021.



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7. The petitioner claims that he is the owner of the two wheeler bearing Registration No.TN-01-BK-8932 and admittedly, the vehicle has been seized by the respondent police and the same has been produced before the Judicial Magistrate V, Egmore and it is now under the custody of police. In such circumstances, keeping the two wheeler in idle will damage the vehicle.

8. Now the petitioner seeks return of vehicle since the vehicle was stationed in an open yard and subject to natural calamities and unconditional weather conditions.

9. In ***Sunderbhai Ambalal Desai vs State Of Gujarat*** (cited supra), the Hon'ble Supreme Court in paragraph No.17 has held as follows:

"In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of



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applications for return of such vehicles."

10.Considering the nature of the offence involved and also considering the dictum of the Supreme Court cited supra, I am inclined to return the vehicle to temporary custody of the petitioner on certain conditions.

11. Accordingly, the impugned order passed by the Court below is set aside and the respondent police is directed to return the vehicle bearing Registration No. TN-01-BK-8932 to temporary custody of the petitioner, on complying 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 not alienate or encumber the vehicle in any manner;
- iii.the petitioner shall execute a bond for a sum of Rs.50,000/-(Rupees fifty thousand only) before the V Metropolitan Magistrate, Egmore, Chennai;
- iv.the petitioner shall give an undertaking that he will not use



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the vehicle for any illegal activities in future;

v. the petitioner shall take photograph of the vehicle; and

vi.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

12. Accordingly, the Criminal Revision is allowed.

02.01.2023

msr

Index:Yes/no

Internet:Yes/no

To

1. The Metropolitan Magistrate-V, Egmore, Chennai
2. The Inspector of Police,
K-6, T.P.Chathiram Police Station,
Chennai.

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3. The Public Prosecutor,
High Court of Madras, Chennai.

V.SIVAGNANAM, J.
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