



Crl.R.C.No.2035 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

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Harish

... Petitioner

Vs.

The State by
The Inspector of Police,
Peralam Police Station,
Thiruvarur District.
(Crime No.338 of 2023)

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w. 401 of Cr.P.C, prayed to set aside the order passed in Crl.M.P.No.4118 of 2023 on the file of the District Munsif-cum-Judicial Magistrate, Nannilam dated 11.10.2023.

For Petitioner : Mr.B.Kumarasamy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



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This Criminal Revision Case has been filed to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Nannilam in Crl.M.P.No.4118 of 2023 dated 11.10.2023.

2. The petitioner who is the owner of the Honda City Car bearing registration No.TN09-BU-5368 had filed a petition seeking return of property, since his car has been seized in Crime No.338 of 2023 by the respondent police for the offence under section 41(aa) of Tamilnadu Prohibition Act.

3. The contention of the petitioner is that the petitioner had purchased the vehicle availing finance from Mahindra Mahindra Finser and the original RC is being retained with the financier. This car has been purchased by the petitioner for taking his children to school which is situated farther away. On 07.07.2023, his friend had requested the car of the petitioner to visit Thirunallaru temple and the petitioner had given the car to them.



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Thereafter, the petitioner came to know that the respondent police during the regular vehicle check near the Gandhi market stopped the vehicle and found beer and liquor bottles of Pondicherry origin being smuggled in his car and hence, the car has been seized as well as the two persons have been arrested. Thereafter, the petitioner had filed a return of property petition before the lower court on 26.07.2023 and after the petition was numbered, the respondent police had initiated confiscation proceedings and made it as an objection. The trial court for the reason that the confiscation proceedings have been initiated and also notice under section 14 (4) had been issued, dismissed the petition which is not proper. He further submitted that the petitioner is residing at Annanagar, Kuzhithalai, Karur. No notice to the petitioner had been served as on date. Further as and when the notice is served, the petitioner shall respond to the notice and appear before the confiscation authority and shall defend the case.

4. The learned Additional Public Prosecutor on the other hand



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strongly opposed the petition submitting that during the routine road check, the respondent police found that the petitioner vehicle was smuggling and transporting the liquor bottles of huge quantity, which are the make of Pondicherry. When the inmates of the car were questioned, they were unable to give proper explanation. Thereafter, the vehicle was seized. Since no public witnesses were coming forward for the seizure, in the presence of police witnesses, the liquors were destructed and destruction mahazar recorded and thereafter, the vehicle had been produced. Even in the FIR, it has been recorded that the confiscation proceedings were contemplated. Further he produced the confiscation notice initiated in Na.Ka.No.128/23 dated 28.07.2023, wherein the notice has been served to the sister of the petitioner.

5. Considering the submissions and perusal of the materials, it is seen that admittedly, the petitioner is not an accused. The confiscation proceedings have been initiated only on 28.07.2023. The notice has been



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served to the petitioner's sister who is residing at No.20, 4th Cross Street, Srinivasa Nagar, Trichy-17, which would not be in compliance of service of notice. Admittedly, the petitioner is residing at Anna Nagar, Kuzhithalai, Karur District which is seen from the served copy produced by the learned Additional Public Prosecutor. In any event, the initiation of confiscation proceedings would not deny the petitioner for having his vehicle as an interim custody.

6. 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.

7. Further, this Court in the case of “*Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station, Nagapattinam District*”



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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.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.

9.In view of the aforesaid reasons, this court is hereby to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Nannilam made in Cr.M.P.No.4118 of 2023, dated 11.10.2023 and the criminal revision is allowed.

10.The learned District Munsif-cum-Judicial Magistrate, Nannilam



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is directed to return the vehicle Honda City Car bearing registration

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No.TN09-BU-5368 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 District Munsif-cum-Judicial Magistrate, Nannilam;

(ii)The petitioner shall produce the original RC Book of the vehicle or a letter from the financier for retaining the R.C., and other relevant records to prove his ownership. The learned Magistrate shall peruse the same 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



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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.

30.11.2023

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citations :Yes/No



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- To
- 1.The Inspector of Police,
Peralam Police Station,
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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