



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	04.09.2023
Pronounced on	:	02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD).No.800 of 2023

Rajendran

... Petitioner

Vs.

The State Rep by
The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.
(In Crime No.109 of 2023)

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order passed in Crl.M.P.No.3466 of 2023, on the file of the learned Judicial Magistrate No-II, Sivakasi, Virudhunagar District, dated 30.06.2023.

For Petitioner : Mr.G.Yogeshwaran

For respondents : Mr.T.Senthil Kumar
Additional Public prosecutor



ORDER

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This Criminal Revision Case has been filed against the order dated 30.06.2023 passed by the learned Judicial Magistrate No-II, Sivakasi, Virudhunagar District, in CrI.M.P.No.3466 of 2023.

2. The case of the prosecution is that on 27.04.2023, when the respondent was doing their regular check up, they found the petitioner driving a hero honda Splendor bike carrying a suspicious white colour bag. When the respondent was about to stop him, he tried to run away, however, the respondent caught him and on checking the bag, they found 13 bottles of Express Special Brandy liquor. Therefore, the respondent police registered a case in Crime No.109 of 2023, for the alleged offence punishable under Section 4(1) (a) of the TN Prohibition Act.

3. The learned counsel for the petitioner submitted that the petitioner herein got the bike through Sri Ram City Union Finance Company and hence, he has pledged the original RC Book with the said Finance Company. Therefore, he was not able to produce the original R.C.Book. In support of this contention, he relied the judgment of the



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Hon'ble Supreme Court in the case of ***Sunderbai Ambalal Desai Vs.***

State of Gujarat, reported in ***AIR 2003 SC 638***. He would further submit that the learned trial Judge failed to consider the fact that without conducting proper enquiry and only for the statistical purpose, the respondent lodged a false complaint and registered the case and seized the vehicle. Therefore, he prays for quashing the case.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that the confiscation proceeding has been initiated and therefore, he prays for dismissal.

5. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

6. It is a well settled principle that when the confiscation proceeding is initiated, the petition under Section 451 of Cr.P.C., to seek interim custody is not maintainable. The same was fortified in the following judgments:



(i) ***State of M.P. v. Uday Singh*** reported in **2020 12 SCC 733**,

held as follows:

23. Subsequently in 2004 in Sujit Kumar Rana [State of W.B.v. Sujit Kumar Rana, (2004) 4 SCC 129 : 2004 SCC (Cri) 984] another two-Judge Bench of this Court dealt with the applicability of Section 482 CrPC for quashing of proceedings for confiscation of forest produce under the provisions of the Forest Act, 1927, as amended in relation to the State amendments to inter alia, confer a power of seizure and confiscation and to enact a bar of jurisdiction of other courts and tribunals notwithstanding anything contained in CrPC. This Court held : (SCC p. 139, para 31)

“31. ... Once, however, a confiscation proceeding is initiated; in terms of Section 59-G of the Act, the jurisdiction of the criminal court in this behalf stands excluded. The criminal court although indisputably has the jurisdiction to deal with the property which is the subject-matter of offence in terms of the provisions of the Code of Criminal Procedure but once a confiscation



proceeding is initiated, the said power cannot be exercised by the Magistrate.”

Once the criminal court had no power to deal with the property seized under the Act, the High Court was held to have no jurisdiction under Section 482 CrPC to quash proceedings for confiscation of forest produce.

(ii) David Vs.Sakthivel reported in **2010(1) LW CrL.129**, held as

follows:

i. Whenever seizure of properties involved in the commission of offence under prohibition Act, exercise of power if not automatic. Court should afford sufficient opportunity to the prosecution to inform the Court about the steps taken by the Investigating agency. Keeping in view the spirit of Section 14(4) of TNP Act, Court on its own should as-certain whether any confiscation proceedings has been initiated and the stage of confiscation proceedings.

ii. After affording sufficient opportunity to the prosecution and only after ascertaining about the steps taken for initiation of confiscation proceedings, Court could exercise its discretion under Sections 451 or 457 Cr.P.C., Court could



judiciously Empathy Sympathy part 1 exercise its discretion with due care and caution keeping in view the spirit of Section 14(4) of TNP Act. Exercise of discretion under Sections 451 and 457 Cr.P.C., is only after affording sufficient opportunity to the prosecution to get instructions. Subordinate Courts are directed to insist the Assistant Public Prosecutor/Public Prosecutor to file written memo as to the steps taken under Section 14(4) of TNP Act or otherwise could only on receipt of written memo, Court could proceed to exercise its power under Section 451 and 457 of Cr.P.C.,

iii. In case if the Court orders interim custody of vehicle, the order should be speaking order recording reasons to order interim custody of the vehicle. In case if the Court orders interim custody of the vehicle, Court should obtain necessary undertaking from the owner of the vehicle to produce the vehicle as and when directed and send copy of undertaking to the District Collector/Prohibition Officer in charge of the District or other authorized officer in that behalf by the Government along with copy of the order passed by the Court.



(iii) **Mohammede Shakul Hameed Vs. The state of Tamil Nadu**

in **Crl.R.C.(MD).No.103 of 2018:**

"..... From a reading of the above guidelines (David Vs.Sakthivel) the Division Bench has clearly stated that before passing an order under Section 451 and 457 of the Code of Criminal Procedure, the Magistrate should ascertain whether confiscation proceedings have been initiated and the stage of confiscation proceedings. Division Bench has further stated that opportunity must to afforded to the prosecution and only after ascertaining about the steps taken for initiation of confiscation proceedings, Court could exercise its discretion under Section 451 and 457 of Code of Criminal Procedure. In other words, if no steps have been taken for initiation of confiscation proceedings, then, it is open to the Court to exercise the powers under Section 451 or 457 of the Code of Criminal Procedure. In the Division proceedings, after a vehicle is seized, the Investigating agency should have to take steps for initiation of confiscation proceedings. **If once confiscation proceedings have been initiated by the appropriate authority,**



the Court may not have the power to exercise powers under Section 451 or 457 of the Code of Criminal Procedure. Thus, the power of the Court to pass orders under Section 451 and 457 of the Code of Criminal Procedure will arise only during the state when steps are not being taken for initiation of confiscation proceeding.

7. From the above law laid down by the Hon'ble Supreme Court as well as this Court, it is clear that after initiation of the confiscation proceedings, the petition under Section 451 Cr.P.C., to seek interim custody of the vehicle, etc., is not maintainable. Since confiscation proceeding has been initiated in this case, the order of the learned trial Judge, is in accordance with law. The confiscation proceedings initiated by the competent authority shall be completed within a period of one month from the date of receipt of a copy of this order.

8. In the result, this Criminal Revision Case stand dismissed.

02.11.2023

NCC :Yes / No
Index :Yes / No
Internet :Yes / No



K.K.RAMAKRISHNAN, J.

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