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Crl.R.C.No.363 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.363 of 2024

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... Petitioner

Vs.

State Rep by Inspector of Police,
Kondalampatty Police Station,
Salem District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.894 of 2023 on the file of learned Judicial Magistrate V, Salem in Crime No.266 of 2023 on the file of the respondent/Police and to direct the Court below to Return the Property of swift desire tour BSIV vehicle in bearing Reg.No.KA-36-V-2807 and Chassis No.MA3FSEB1S00526937 in Crime No.266 of 2023 on the file of respondent/Police.

For Petitioner	:	Mr.M.P.Saravanan
For Respondent	:	Mr.C.E.Pratap, Government Advocate (Crl. Side)

ORDER

The petitioner has filed a petition under Section 451 & 457 of Cr.P.C., in Crl.M.P.No.894 of 2023 before the learned Judicial Magistrate No.V, Salem to return the vehicle viz., Swift Dzire Tour BSIV bearing Reg.No.KA 36 V 2807. The learned Magistrate, by order, dated 13.07.2023 dismissed the petition, against which, the present Criminal Revision Case.



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2.The learned counsel for the petitioner submitted that the petitioner is the owner of the above said vehicle which was seized by the respondent Police in Crime No.266 of 2023, for offence under Section 24(1) of the Cigarettes and Other Tobacco Products Act, 2003 and Section 77 of the Juvenile Justice Act, 2015. He further submitted that the petitioner is not an accused in this case and he is only the owner of the vehicle. The respondent Police projected the case that during vehicle checkup, the accused persons viz., Lingaraj, Mohammed Niswardhin and Thalla Ram were illegally transported banned tobacco products in the said car and they were intercepted, enquired and tobacco produced were seized. In this case, the petitioner only lent his car and he has not involved any crime. He further submitted that the vehicle was taken up one of the accused for some urgent needs. Believing the same, the vehicle was given and later, it has been misused by the accused persons. Now, the vehicle is kept in the open yard of the Police station exposing to vagaries of weather. He further submits that the petitioner to show his bonafide, he is ready to deposit Rs.50,000/- as non-refundable deposit.

3.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the accused in Crime No.266 of 2023 had



illegally transported 581.180 kgs of banned tobacco products from the State of Karnataka to Salem in the petitioner's above said vehicle and to sell the same to college and school going students. At the timely intervention of the respondent Police, the said vehicle was seized along with the tobacco products and the investigation is in progress. In this case, 581.180 kgs of banned tobacco products were seized in the petitioner's vehicle. The Court below finding that there is no reason is with the petitioner as to how the vehicle belonged to the petitioner vested with the hands of the accused persons, had rightly dismissed the return of property petition. Admittedly, the petitioner is not an accused in Crime No.266 of 2023. If the vehicle is returned to the petitioner, in all probability the vehicle will be used for commission of similar type of offence. Hence, strongly opposed the revision.

4.Considering the submissions and on perusal of the materials, it is not in dispute that the petitioner is the owner of the vehicle. For urgent needs, the petitioner handed over the said vehicle to the accused. On the other hand, the accused had transported the above said banned tobacco products. It is also seen that the vehicle is kept in open yard exposing vagaries of weather. Admittedly, the petitioner is not an accused in Crime No.266 of 2023. 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.

5. In view of the aforesaid reasons, this court is constrained to set aside the order, dated 13.07.2023 in Crl.M.P.No.894 of 2023 passed by the learned Judicial Magistrate No.V, Salem and the criminal revision case is allowed. In view of the same, the Court below is directed to return the vehicle viz., Swift Dzire Tour BSIV bearing Reg.No.KA 36 V 2807 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.V, Salem.

(ii) The petitioner shall pay a sum of Rs.50,000/- (Rupees fifty thousand only) as non-refundable deposit through RTGS/NEFT in favour of the Cancer Institute (WIA) (Regional Cancer Centre), Adyar, Chennai- bearing Account No.149710011005477, Andhra Bank, Madhya Kailash Branch.

(iii) On such payment and production of proof and also production original RC Book of the vehicle and other relevant records, the learned Magistrate peruse the same, retain xerox



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copy and return the same to the petitioner with a view to use the vehicle.

(iv)The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over.

(v)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.

28.02.2024

Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Index : Yes/No
Internet : Yes/No

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To

- 1.The Judicial Magistrate No.V,
Salem.
- 2.The Inspector of Police,
Kondalampatty Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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