



Crl.R.C.No.440 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.440 of 2024

Selvam

... Petitioner

Vs.

State rep by
The Sub Inspector of Police,
Chinnasalem Police Station,
Kallakurichi District.
(Crime No.776/2023)

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 Cr.P.C. of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate No.II, Kallakurichi 606 201 in Crl.M.P.No.2977 of 2023 dated 15.02.2024 and to pass an order directing the respondent to handover Bike bearing Registration No.TN 15 MA 0547 seized in Crime No.776 of 2023 to the petitioner.

For Petitioner	:	Mr.G.Govarthanan
For Respondent	:	Mr.S.Raja Kumar Additional Public Prosecutor



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ORDER

The petitioner is the owner of two wheeler bearing registration No.TN MA 0547 BAJAJ PLATINA, which was seized by the respondent police in Crime No.776 of 2023 for the offence under Sections 4(1-a), 4(1-h) TNP Act, had filed a return of property petition before the trial Court in Crl.M.P.No.2977 of 2023. The trial Court by order dated 15.02.2024 dismissed the petition. Against which the present revision is filed.

2.The contention of the petitioner is that the petitioner has been falsely implicated in this case. Even according to the admitted case of the prosecution is that on 26.12.2023, the petitioner and another person were travelling in a two wheeler found in possession of 3 bottles of Whiskey each contains 180 ml and two bottles each 180 ml without seal, in total 5 bottles were seized. Since pungent smell arose in the opened bottles, the respondent police doubting the mixture of other intoxication substance, they have seized the bottles and vehicle.



3. The contention of the petitioner is that the petitioner after his arrest produced before the jurisdictional Magistrate for remand on 26.12.2023 at about 6.56 p.m., at residence, though the petitioner was arrested at 8.30 a.m., on the same day but the delay of 14 hours. The Magistrate on enquiry had not remanded the petitioner. The case itself is foisted case against the petitioner. The petitioner was not carrying beyond the permissible limit. The permissible limit is 4.5 liters. Further, the case though they thought that there is some mixture of intoxication. The case is registered under Sections 4(1-a), 4(1-h) TNP Act, for possession and transportation of liquor for the purpose of sale. In this case the petitioner was neither carrying any liquor for any sale nor was in possession of beyond the permissible limit . Hence no case is made out and the initiation of the confiscation proceedings is also not proper.

4.The learned Additional Public Prosecutor is filed counter and submitted that the case of the prosecution is that on 26.12.2023 at about 8.30 hours, when Tr.K.Karthick, the then Sub Inspector of Police was in station duty, at that time he received secret information about illegal



transportation of alcohol. Based on that, he along with his police team went to the scene of occurrence (i.e.) VP Akaram Village opposite of accused's house. At that time, the said police parties stopped one Bajaj Platina bearing registration No.TN 15 MA 0547 and enquired the accused persons, during the enquiry came to know that the accused persons namely Selvam/A1 and Subramaniyan/A2. Then, the accused A2 escaped from that place. On searching the said vehicle and found in possession of Golden Choice Brandy-3 each 180 ml, without seal bottles-1 and opened alcohol bottles-2 each 180 ml. Subsequently, the said police parties seized the above brandy bottles along with above said two wheeler from A1 under cover of seizure mahazar in the presence of witnesses. After that the then Sub Inspector of Police have arrested the accused A1 and obtained his confession statement. Hence, the complaint.

4.1. It is submitted that based on the above complaint a case was registered in Chinnasalem Police Station in Crime No.776 of 2023, under Sections 4(1)(a), 4(1)(h) and 14(A) TNP Act against the accused persons A1 & A2 on 26.12.2023 at about 9.15 hours by Tr.K.Karthick, the then Sub



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Inspector of Police and he took up the case for investigation.

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4.2. It is submitted that the then Sub Inspector of Police took steps to proceed the vehicle under confiscation and the Additional Superintendent of Police, Prohibition Wing, Kallakurichi has initiated confiscation proceeding under Section 14(4) of TNP Act vide C.No.20/Adsp/HQ/Vel.con/KLK/2024. During proceedings, on 15.02.2024, the Additional Superintendent of Police, Prohibition Wing, Kallakurichi served a notice to the petitioner/accused-1

4.3. It is submitted that during the course of pending investigation, the petitioner /Accused 1 filed a petition under Section 457 & 451 of Cr.P.C., for return of Bajaj Platina bearing registration No.TN 15 MA 0547 before the Judicial Magistrate No.II, Kallakurichi in Crl.M.P.No.2977 of 2023 and the same was dismissed on 15.02.2024.

5. Considering the submissions and on perusal of materials, it is seen that only 5 bottles of 180 ml is said to have the possession of the petitioner, in which two bottles seal is said to have been broken and the case registered



under Sections 4(1-a), 4(1-h) TNP Act, for possession and transportation of liquor for sale against the petitioner is not get attracted on the facts of the case. The lower Court had also refused the remand of the petitioner.

6. It is seen that from the date of registration of FIR, the vehicle is kept in open space exposing to vagaries of weather 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. In view of the aforesaid reasons, this court is constrained to set aside the order, dated 15.02.2024 passed by the learned Judicial Magistrate No.II, Kallakurichi and the Criminal Revision Case is allowed. In view of the same, the lower Court is directed to return the two wheeler bearing registration No.TN MA 0547 BAJAJ PLATINA 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.II, Kallakurichi;

(ii) The petitioner shall produce the original RC Book of the vehicle and other relevant records. The learned Principal Special Judge shall peruse the RC book 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 as and when required by the respondent and by the court below.

8. With the above directions, this Criminal Revision Case is allowed.

28.03.2024

rpl

Speaking order/Non-speaking order

Index: Yes/No

Neutral Citation: Yes/No



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M.NIRMAL KUMAR, J.

rpl

To

1.The Judicial Magistrate No.II, Kallakurichi.

2.The Sub Inspector of Police,
Chinnasalem Police Station,
Kallakurichi District.

3.The Public Prosecutor,
High Court, Madras.

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