



Crl.R.C.No.507 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.507 of 2024

Vijayakumar

... Petitioner

Vs.

State rep by
The Inspector of Police,
Prohibition Enforcement Wing,
Thiruppathur,
Thiruppathur District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records on the file of the learned Judicial Magistrate No.I, Thirupathur, Thirupathur District in Crl.MP.No.16534 of 2023 dated 12.01.2024.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

The petitioner filed a petition in CrI.M.P.No.16534 of 2023 in Crime No.489 of 2023 seeking return of vehicle viz., Yamaha Ray 125 bearing registration No.TN-83-MB-8044, which was seized by the respondent Police in Crime No.489 of 2023 for offences under Sections 4(1)aa, 4(1-A)ii of Tamil Nadu Prohibition Act before the learned Judicial Magistrate No.I, Thirupathur, Vellore District. The learned Judicial Magistrate, by order, dated 12.01.2024 dismissed the return of property petition, against which, the present revision has been filed.

2.The learned counsel for the petitioner submitted that the petitioner purchased a two wheeler, viz., Yamaha Ray 125 bearing registration No.TN-83-MB-8044 by availing finance from IDFC First Bank Limited. The case projected against the petitioner is that on 10.08.2023, when the Inspector of Police went to the scene of occurrence on receipt of secret information, a two wheeler came there and on seeing the police, the accused escaped from the scene of occurrence. The respondent police conducted



search and found the two wheeler in possession of illicit arrack and on enquiry, it came to know that the petitioner is the owner of the vehicle.

Thereafter, the petitioner was arrested and the vehicle was seized. He further submitted that the petitioner has been falsely implicated in this case. It is submitted that the vehicle is kept in open space exposing to vagaries of weather, further detention of vehicle would make the vehicle unusable, rusted and it would become a scrap. The petitioner is ready to comply with any condition that this Court may impose while granting return of vehicle. Added to it, it is also constrained to make the monthly EMI to the financier. Hence, he prays for return of property.

3.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that on 10.08.2023 at about 19.15 hours, when the Inspector of Police was in station duty, at that time, he received a secret information about illegal transport of liquor and country spirit. Thereafter, he went to the scene of occurrence, i.e. Near Pachai bridge service road along with the Police team. At that time, one suspicious person came there in a two wheeler and on seeing the police, he escaped



from the scene of occurrence. The respondent police conducted search in a two wheeler and seized 40 Pouches of Old Secret XXX rum weighing 90 ml each and 50 litres of ID Arrack. The respondent police arrested the petitioner and seized the contraband under the cover of seizure mahazar in the presence of witnesses. Thereafter, the FIR in Crime No.489 of 2023 registered for offence under Sections 4(1)aa and 4(1-A)ii of TNP Act, samples were taken and sent for chemical analysis. Hence, prays for dismissal.

4.Considering the submissions made and on perusal of the materials available on record, it is seen that from the date of seizure, the vehicle is kept in open space 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. Added to it, the Apex Court in the case of *Sainaba vs. The State of Kerala and another in Criminal Appeal No.2005/2022 [SLP (CRL.) No.72080/2022]* by following the judgment of the Apex Court in the case of “*Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 283*” released the vehicle



which was involved in the NDPS Act. Further, the learned Additional Public Prosecutor objected return of property by referring to the order of this Court in Crl.R.C.(MD).No.41 of 2019 dated 16.06.2023, but it is seen that in the said order, the decision of the Apex Court in *Sainaba's* case has not been referred to. In view of the decision of the Apex Court on this point as laid down which is binding under Article 141 of the Constitution of India, this Court is inclined to allow return of property.

5.Accordingly, this Criminal Revision Case is allowed and the impugned order dated 12.01.2024 passed by the learned Judicial Magistrate No.I, Thirupathur, Vellore District in Crl.M.P.No.16534 of 2023 in Crime No.489 of 2023 is set aside. In view of the same, the learned Judicial Magistrate No.I, Thirupathur, Vellore District is directed to return the vehicle, viz., Yamaha Ray 125 bearing registration No.TN-83-MB-8044, on the following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties to the satisfaction of the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai;



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(ii) The petitioner shall produce the original RC Book along with self attested photostat copy of RC Book of the vehicle and other relevant records to prove his ownership. The learned Principal Special Judge shall peruse the RC book and other records, retain xerox copy of the same and return the original RC book to the petitioner;

(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 produce the vehicle as and when required by the respondent and by the court below.

26.03.2024

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

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To

- 1.The Inspector of Police,
Prohibition Enforcement Wing,
Thiruppathur,
Thiruppathur District.
- 2.The Judicial Magistrate No.I,
Thirupathur,
Vellore District
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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