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Crl.R.C.No.1460 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1460 of 2024

Manivasagan

... Petitioner

Vs.

State, rep. by
The Inspector of Police,
Nagoor Police Station,
Nagapattinam District.
(Crime No.132 of 2024).

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 22.05.2024 made in Crl.M.P.No.1727 of 2024 on the file of the Judicial Magistrate No.II, Nagapattinam, Nagapattinam dismissing the petition to return the vehicle viz., Mahindra & Mahindra Bolero Maxx Pickup, bearing Reg.No.TN-51-AS-7232 to the petitioner herein.

For Petitioner : Mr.R.Sasikumar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

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The petitioner/accused, the owner of the vehicle viz., Mahindra & Mahindra Bolero Maxx Pickup bearing Reg.No.TN-51-AS-7232 has filed a petition in Crl.M.P.No.1727 of 2024 for return of vehicle, which was seized in connection with Crime No.132 of 2024 on the file of the respondent Police. The learned Judicial Magistrate No.II, Nagapattinam, by order, dated 22.05.2024 dismissed the petition. Against which, the present criminal revision case is filed.

2.The learned counsel for the petitioner submitted the petitioner is the owner of the above said vehicle and he is the 1st accused in Crime No.132 of 2024 for offence under Sections 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, 1937. The petitioner purchased the said vehicle by availing finance from the Mahindra Financial Services Limited. The petitioner used the vehicle for his income and earnings, due to detention, the petitioner is made to suffer. He further submitted that now the vehicle is kept in open yard exposing to vagaries of weather. Hence, he prays for setting aside the impugned order.



3.The learned Additional Public Prosecutor appearing for the respondent Police submitted that on 14.04.2024 at about 4.30 a.m, when the respondent Police were conducting regular road check near ECR Road Amirtha School, the petitioner/A1 and A2 came in the vehicle. On seeking the Police, they stopped the vehicle and attempted to escape. Thereafter, the petitioner/A1 and A2 caught and disclosed their identity. On search of the vehicle, 384 bottles of 180 ml Directors Club and 864 bottles of 90 ml Directors Club, 15 bottles of 750 ml Vinbros Deluxe and 20 litres of ID Arrack. The respondent Police seized the contraband, vehicle and arrested the accused and registered FIR in Crime No.132 of 2024 for offence under Sections 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, 1937. Thereafter, the vehicle and the accused produced before the concerned Magistrate and confiscation proceedings initiated. Hence, the revision is liable to be dismissed.

4.Considering the submissions and on perusal of the materials, it is not in dispute that the petitioner is the owner of the vehicle viz., Mahindra & Mahindra Bolero Maxx Pickup bearing Reg.No.TN-51-AS-7232. 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.

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5.Further, this Court in “**David Vs. Sakthivel, Inspector of Police-cum-Station House Officer** reported in **2010 1 MLJ (Crl.) 129**” held that '*When the vehicle is involved in the commission of prohibition offence, if there is automatic exercise of power by the Court, Section 14(4) of the Act would become a dead letter. In our view, order of confiscation of a vehicle involved in the commission of offence under Section 14(4) of Tamil Nadu Prohibition Act is not only punitive but also different.*'. In this case, the petitioner's owner of the vehicle is also an accused who was caught red handed while smuggling liquor bottles and arrack packets. The confiscation proceedings already initiated.

6.In view of the aforesaid reasons, this Court finds no reason to interfere with the impugned order passed by the learned Judicial Magistrate No.II, Nagapattinam in Crl.M.P.No.1727 of 2024, dated 22.05.2024 and the same is hereby confirmed. Accordingly, this criminal revision case stands dismissed.



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7.The petitioner is at liberty to participate in the confiscation proceedings, put forth his case, contest and resist confiscation and it is for the confiscation authority to give opportunity to hear the objections of the petitioner and to pass orders on its own merits.

10.09.2024

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

1.The Judicial Magistrate No.II,
Nagapattinam.

2.The Inspector of Police,
Nagoor Police Station,
Nagapattinam District.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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