



Crl.R.C.No.1532 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1532 of 2024
and Crl.M.P.No.12780 of 2024

S.Ambika

... Petitioner

Vs.

1.The State rep. by,
The Deputy Superintendent of Police,
Prohibition of Enforcement Wing,
Cuddalore District,
Cuddalore.

2.The Station House Officer,
Cuddalore OT Police Station,
Cuddalore.
(Crime No.359 of 2024).

... Respondents

PRAYER: Criminal Revision is filed under Section 438 r/w 442 of BNSS to set aside the order dated 30.08.2024 passed in C.M.P.No.9941 of 2024 on the file of the Judicial Magistrate No.II, Cuddalore consequently directing the respondents to release the petitioner's vehicle (i.e. bearing TN 31 CT 5163 Hero Splendor Motor Cycle vehicle, XTech, Black Tornado Grey Colour).

For Petitioner	:	Mr.R.Raja
For Respondents	:	Mr.A.Damodaran, Additional Public Prosecutor



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ORDER

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The petitioner is the owner of the vehicle, namely, Hero Splendor bearing registration No.TN 31 CF 5163 has filed a return of property petition before the learned Judicial Magistrate No.II, Cuddalore in Crl.M.P.No.9941 of 2024. The Court below, by order, dated 30.08.2024 citing the initiation of confiscation proceedings, dismissed the petition.

2.The contention of the petitioner is that the petitioner's son Sathish is studying in Government Arts College, Cuddalore and for his use to attend the College, Special Class and Coaching Centre, the petitioner purchased the bike by availing financial aid from Shriram Finance Limited. The petitioner is a widow, an agricultural coolie and she is the earning member in her family, with her meagre income she has to run the family as well as pay EMI. The petitioner's son is said to have travelled with his College friend one Rajesh, at that time, their vehicle was stopped, there was some wordy altercation between the Police and the petitioner's son, hence a false case was foisted as though they were transporting 5 litres of arrack from Puducherry. He further submitted that the Trial Court dismissing the



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petition filed by the petitioner seeking return of property on the ground that confiscation proceedings initiated is not proper and no notice was served to the petitioner.

3.The learned Additional Public Prosecutor submitted that on 20.07.2024 at about 10.00 a.m., the respondent police conducted road check, at that time, a vehicle, namely, Hero Splendor bearing registration No.TN 31 CF 5163 was stopped and the riders of the bike dropped the vehicle and attempted to flee, they were caught and enquired. They disclosed their names as Sathish and Rajesh, in the bike ten white colour plastic containers containing ½ litre arrack each to the total of 5 litres found. Thereafter, the said Sathish and Rajesh were arrested, brought to the Police Station along with the bike, case registered in Crime No.359 of 2024 for the offence under Section 4(1)(c), 4(1-A)(ii) and 14A of the Tamil Nadu Prohibition Act. He further submitted that after registration of the case, confiscation proceedings initiated on 22.08.2024. The petitioner is the mother of the second accused. He would further submit that the petitioner refused to receive confiscation notice and hence, notice was effected by pasting, photograph taken in the presence of Village Administrative Officer. The petitioner can very well



participate in the confiscation proceedings and make a claim for the vehicle.

Hence, prayed for dismissal.

4.The learned counsel for the petitioner refuted the contention of the learned Additional Public Prosecutor stating that false case has been registered. In the FIR, it was recorded that in the bike 10 white colour plastic containers ½ litre each was found further samples drawn from two bottles and balance eight arrack empty bottles seized along with two plastic bags and the motor bike but in the notice, it is recorded as ten white polythene cover packets, hence, there is discrepancy of containers in which arrack smuggled.

5.Considering the submissions made and on perusal of the materials, it is seen that the petitioner is the mother of A2 and she purchased the bike availing financial assistance from Shriram Finance Limited for her son's educational purpose. The petitioner is a widow and she is an agricultural coolie. The petitioner's son has got no bad antecedents. Further, the vehicle is kept in open yard of the Police Station, exposing to vagaries of weather and thereby, the value of the vehicle is getting diminished day by day. The



only requirement is subject to the outcome of the confiscation proceedings, the vehicle can be returned to the petitioner. 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.

6.Further, this Court in the case of “***Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station, Nagapattinam District in Crl.R.C.No.501 of 2011***”, considered the case of “***David Vs. Sakthivel, Inspector of Police-cum-Station House Officer reported in 2010 1 MLJ (Crl.) 929***” and ordered return of seized vehicle to the owner, which is being consistently followed, despite initiation of the confiscation proceedings.

7.In view of the aforesaid reasons and finding that the initiation of the confiscation proceedings would not deny the petitioner from executing the bond and getting back his vehicle, this Court set asides the order passed by the learned Judicial Magistrate No.II, Cuddalore, made in Crl.M.P.No.9941 of 2024, dated 30.08.2024. Accordingly, this criminal revision case is allowed. Consequently, connected miscellaneous petition is closed.



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8.The learned Magistrate is directed to return the vehicle, namely, Hero Splendor XTech Black Tornado Grey bearing registration No.TN 31 CF 5163 to the petitioner, on the following conditions:-

- 1) 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, Cuddalore;
- 2) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove his ownership. The learned Magistrate 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;
- 3) The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over;
- 4) 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 Court below and by the District Collector of the District or authorized officer in that behalf by the Government.
- 5) The petitioner shall participate in the confiscation proceedings and shall produce the vehicle before the confiscation authority. This order is subject to the



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outcome of the confiscation proceedings.

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Index: Yes/No

Neutral Citation: Yes/No

Speaking Order/Non-Speaking Order

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To

1.The Deputy Superintendent of Police,
Prohibition of Enforcement Wing,
Cuddalore District, Cuddalore.

2.The Station House Officer,
Cuddalore OT Police Station,
Cuddalore.

3.The Judicial Magistrate No.II,
Cuddalore.

4.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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