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Crl.R.C.No.1883 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1883 of 2023

Haridose

... Petitioner

Vs.

State, rep. by
The Inspector of Police,
Thiruvallangadu Police Station,
Thiruvallur District.
(Crime No.539 of 2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 09.10.2023 made in Crl.M.P.No.6136 of 2023 on the file of the Judicial Magistrate, Tiruttani, Thiruvallur District dismissing the petition to return the vehicle viz., Honda Activa two wheeler bearing Registration No.TN-20-DA-8992 to the petitioner herein.

For Petitioner : Mr.R.Sasikumar

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

ORDER

The petitioner/accused is the owner of the vehicle viz., Honda Activa bearing Reg.No.TN-20-DA-8992 has filed a petition in Crl.M.P.No.6136 of 2023 for return of vehicle, which was seized in connection with Crime No.539



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of 2023 on the file of the respondent Police. The learned Judicial Magistrate, Tiruttani, by order, dated 09.10.2023 dismissed the petition, against which, the present criminal revision case is filed.

2.The learned counsel for the petitioner submitted that the petitioner's friend A1 requested the petitioner to take his vehicle for some urgent work. Believing the same, the petitioner handed over the vehicle, on the other hand A1 misused the vehicle and said to have transported 180 ml of Express Brandy-48. It is not the case that on the knowledge of the petitioner, A1 transported the liquor bottles. Added to it, the petitioner was not found along with the vehicle at the time of occurrence. Further, no notice regarding confiscation proceedings served on the petitioner. He further submitted that the vehicle is kept in open space exposing to vagaries of weather, further detention 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. He would further submit that due to detention of vehicle, he is unable to continue his routine work and greatly impaired.

3.The learned Additional Public Prosecutor appearing for the respondent Police filed counter submitting that on 02.09.2023 at 12.15 hours when the Sub



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Inspector of Police along with other Police personnels were on patrol duty near Thiruvallangadu, the said vehicle Honda Activa bearing Reg.No.TN-20-DA-8992 came there. The Police had intercepted the vehicle and made enquiry. It came to light that A1 without any permission, had illegally transported 180 ml of Express Brandy-48 for commercial purpose. Hence, the Police had seized the bottles, arrested the accused, recorded his confession and registered FIR in Crime No.539 of 2023 for offence under Sections 4(1-a) of the Tamil Nadu Prohibition Act on 02.09.2023. After completion of investigation, the respondent Police filed charge sheet before the lower Court and the same is yet to be taken on file. In this case, the petitioner is the owner of the vehicle and no previous antecedents and also vehicle was not involved in any offence. Further, confiscation proceedings has been initiated and the same is pending for disposal. 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 two wheeler viz., Honda Activa bearing Reg.No.TN-20-DA-8992 and not an accused in Crime No.539 of 2023. In this case, there is no material to show that the petitioner had given the vehicle to A1 for smuggling and nothing more. The petitioner is making livelihood by way of hiring the said vehicle. It is seen that so far no notice with regard to the



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confiscation proceedings served on the petitioner who is the owner of the vehicle.

5.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.

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. The vehicle is kept in open 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.



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7. In view of the aforesaid reasons, this court set asides the impugned order passed by the learned Judicial Magistrate, Tiruttani in Crl.M.P.No.6136 of 2023, dated 09.10.2023 and the criminal revision is allowed.

8. The learned Judicial Magistrate, Tiruttani is directed to return the vehicle viz., Honda Activa bearing Reg.No.TN-20-DA-8992 to the petitioner, on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.5,000/- (Rupees Ten Thousand only), with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Tiruttani.

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

(iii) 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 Police and by the court below and as well as by the District Collector of the District or authorized officer in that behalf by the Government.



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(iv)The petitioner shall participate in the confiscation proceedings if any initiated and shall produce the vehicle before the confiscation authority.

This order is subject to the outcome of the confiscation proceedings.

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Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

1.The Judicial Magistrate,
Tiruttani.

2.The Inspector of Police,
Thiruvallangadu Police Station,
Thiruvallur District.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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