



Crl.R.C(MD)No.772 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated:03.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD) No.349 of 2024

Kalaiselvam

.. Petitioner / Petitioner /
Sole Accused

Vs.

The State rep. by,
The Inspector of Police,
Srivilliputtur Town Police Station,
Virudhunagar District.
(Crime No.280 of 2023)

.. Respondent / Respondent /
Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order of the learned Judicial Magistrate No.II, Srivilliputtur, in Cr.M.P.No.7430 of 2023, dated 14.08.2023 and set aside the same.

For Petitioner : Mr.T.Antony Arul Raj

For Respondent : Mr.M.Muthumanikkam
Government Advocate(Criminal side)



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ORDER

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This Criminal Revision Petition is filed against the order, dated 14.08.2023 passed in Cr.M.P.No.7430 of 2023 on the file of the learned Judicial Magistrate No.II, Srivilliputtur, and to grant the interim custody of the vehicle viz., Hero Passion Pro bearing Registration No.TN-84-L-0511 and a car bearing Registration No.TN 84 E 3613 (DUTSON) and two mobile phones (OPPO A7 & Samsung Duos), which have been seized by the respondent herein in Crime No.280 of 2023 filed for the offence under Section 328 of IPC and Sections 6(b) and 24(1) of Cigarette and Other Tobacco Products Act, 2003.

2. The petitioner is arrayed as an accused in Crime No.280 of 2023 on the file of the respondent Police and he is the the owner of the vehicles (i.e) a Two wheeler bearing Registration No.TN-84-L-0511 and a car bearing Registration No.TN 84 E 3613 (DUTSON) and two mobile phones (OPPO A7 & Samsung Duos). After completion of investigation in the above crime number, the petitioner filed an application before the learned Judicial Magistrate No.II, Srivilliputtur in Cr.M.P.No.7430 of 2023, seeking interim custody of the above vehicles and mobile phones. However, the said application was dismissed, vide order, dated 14.08.2023 stating that the



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above vehicles were involved in illegal transportation of banned tobacco products and hence, the same were seized by the respondent Police, if interim custody of above vehicles is granted, the same will be involved in the similar kind of offences. Challenging the same, the present revision petition has been filed.

3. The learned counsel for the petitioner submitted that petitioner is an innocent and he was falsely roped in the case and his vehicles also falsely seized. The vehicles were in the custody of the respondent police without proper maintenance and hence value of the property is diminished. He placed reliance on the judgment of Hon'ble Supreme Court reported in **2002(10)SCC283 [Sunderbhai Ambalal Desai v. State of Gujarat]** and seeks the interim custody. He further submitted that the learned trial Judge dismissed the petition only on ground that the vehicle was involved in the transportation of the banned tobacco products and the cellphone was used for the communication of the transportation of the said tobacco products and the same was not a reason to dismiss the petition.

4. The learned Government Advocate (Crl.Side) would submit that the investigation is still pending.



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5. This Court has considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.Side) for the respondent and perused the records placed before this Court.

6. Considering the submissions made by both sides and also this Court has not satisfied with the reason stated by the learned Judicial Magistrate No.II, Srivilliputtur and in view of the law laid down by the Hon'ble Supreme Court reported in **2002(10)SCC283 [Sunderbhai Ambalal Desai v. State of Gujarat]**, this Court is inclined to release the above vehicles and two mobile phones.

7. Accordingly, this Criminal Revision Petition is allowed and the order dated 14.08.2023 in Cr.M.P.No.7430 of 2023 on the file of the learned Judicial Magistrate No.II, Srivilliputtur, is hereby set aside and the vehicles (i.e) a Two wheeler bearing Registration No.TN-84-L-0511 and a car bearing Registration No.TN 84 E 3613 (DUTSON) and two mobile phones (OPPO A7 & Samsung Duos), are ordered to be returned to the petitioner for interim custody subject to the following conditions:-



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- (a) the Investigation Agency shall take photo of the vehicles and mobile phones and produced the same with CD along with the certificate as required under Section 65B of the Evidence Act, before the trial Court;
- (b) the petitioner shall execute a bond for a sum of Rs.35,000/- (Rupees Twenty five thousand only) with two sureties for a likesum to the satisfaction of the learned Judicial Magistrate No.II, Srivilliputtur;
- (c) the petitioner shall produce a certified copy of the R.C.Books of above vehicles;
- (d) the petitioner shall not alienate and shall not make any alteration in the vehicles; and
- (e) the petitioner shall produce the vehicles and mobile phones before the Court and before the respondent police as and when required.

03.04.2024

NCC : Yes/No
Index :Yes/No
Internet :Yes/No

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K.K.RAMAKRISHNAN, J.

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To

- 1.The learned Judicial Magistrate No.II, Srivilliputtur.
- 2.The Inspector of Police,
Srivilliputtur Town Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Order made in
Crl.R.C(MD)No.349 of 2024**

03.04.2024