



WEB COPY



Crl.R.C(MD)No.1223 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.12.2023

Pronounced on : 13.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1223 of 2023

Baskar

... Petitioner

Vs.

State by
The Inspector of Police,
I.P.R.E.C., Virudhunagar.
(In Cr.No.5 of 2020)

... Respondent

PRAYER : This Criminal Revision has been filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order of dismissal of the petition in Cr.M.P.No.12638 of 2023, dated 09.10.2023 on the file of the Judicial Magistrate No.I, Virudhunagar in Virudhunagar District, dismissing the petition filed under Section 451 of Cr.P.C. for grant of interim custody of the motor vehicle of the petitioner bearing Registration No.TN-76-AL-6242 and allow this Criminal Revision Petition and thereby grant the interim custody of the vehicle in TN-76-AL-6242 to the petitioner till the disposal of the criminal case.

For Petitioner : Mr.V.Sasikumar

For Respondent : Mr.S.Manikandan
Government Advocate (Crl.side)



ORDER

WEB COPY

This Criminal Revision Case is filed to set aside the order dated 09.10.2023 made in Crl.M.P.No.12638 of 2023 on the file of the learned Judicial Magistrate No.1, Virudhunagar and to grant interim custody of the vehicle bearing registration No.TN 76 AL 6242 which was seized by the respondent in Crime No.5 of 2020.

2.The brief facts of the case:

The revision petitioner is Accused No.1 in the case registered in Crime No.5 of 2020 by the respondent police alleging that the petitioner's vehicle bearing registration number TN 76 AL 6242 was used for the transportation of contraband by the co-accused. The vehicle was seized by the respondent police on 17.10.2020 for alleged offences under Sections 486 & 420 of IPC and Sections 51(b)(i) r/w Section 63(a) of Copy Right Act. The petitioner is the owner of the said vehicle. The vehicle was seized by the respondent police and the same is kept with respondent police open place thereby it will be ruined due to sunlight, rain, air and natural calamities. The petitioner's vehicle was not used for the alleged offence and false case has been registered against the petitioner. The petitioner filed the petition in Crl.M.P.No.12638 of 2023 before the learned Judicial Magistrate No.1, Virudhunagar. The petition was resisted by the respondent police.



After hearing both the said petition was dismissed on 09.10.2023. Being aggrieved by the order, the petitioner preferred this Criminal Revision Case.

3. Heard both side and perused the records in this Criminal Revision Case.

4. The learned counsel appearing for the revision petitioner has submitted that this is the second petition seeking return of property. Already the petitioner filed Cr.M.P.No.2093 of 2020 before the trial Court and the same was dismissed on 01.12.2020 and the revision in Crl.R.C(MD)No.154 of 2021 was also dismissed on 19.04.2021 by this Court. The petitioner was manufacturing Beedi under the name and style of Sultan Beedi. The defacto complainant was also manufacturing Beedi in the name 'Syed Beedi' and 'Ganesh Beedi'. Upon competitive, the defacto complainant lodged a false complaint against the petitioner as if contraband was transported in the petitioner's vehicle. The petitioner had no knowledge about the alleged occurrence. The petitioner did not intentionally aid any person to do such alleged illegal acts. The petitioner's vehicle was kept idle in open place for the past more than 3 years and the vehicle will get ruined by sun light and rain and it would lose its value. The petitioner is ready to give undertaking and to deposit any amount. In support of his argument the petitioner's counsel relied on the citation reported in **2020 SC (Mad) 631**, wherein this



Court ordered release of vehicle based on the guidelines issued by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai /vs/ State of Gujarat – 2003 (1) CTC 175 and 1983 CrL.L.J 1194 of Kerala High Court in the case ' Vasu /v/ T.Unnikrishnan**. The learned counsel for the petitioner further relied on the following reported decisions:

- (1)AIR 1977 SC 1749 (Basava Kom Dyamogouda Patil /v/ State of Mysore & Anr.)**
- (2) 2002 SCC (Cri) 1099 (Ashok kumar /v/ State of Bihar & Ors.)**
- (3) (2013) 1 MLJ (Cri) 101 (K.Ramar /v/ State of Tamil Nadu)**
- (4) 2020 (2) TNLJR 585 (Mad) (Kayalvizhi /v/ State)**
- (5) 1979 Cr.L.J. 1457 (Shamrao Sampatrao /v/ State of Maharashtra & Anr.)**

5. The learned Government Advocate (Crl.side) for the respondent submitted that the petitioner along with co-accused illegally transported contraband (i.e) Beedi Bundles using duplicate labels of the defacto complainant by using this vehicle. The properties were seized and remanded before the trial Court under R.P.No.159 of 2020. The investigation was completed and charge sheet was also laid and the same was taken on cognizance as C.C.No.572 of 2023. The seized vehicle is very



much relevant to prove the case of the prosecution. The earlier petition for interim custody was dismissed by the trial Court and the Criminal Revision Case filed by the petitioner was also dismissed by the Single Judge of this Court and hence, the second petition for same relief is not maintainable. The petitioner is having three previous cases of this nature. If the vehicle is returned the petitioner would continue the offence of this similar nature. Therefore, he strongly opposed this petition.

6. On hearing both, it is clear that the petitioner is Accused No.1 in this case for the offence alleged that he along with co-accused illegally transported large quantity of contraband by using fake labels of the brand of the defacto complainant by using the petitioner's vehicle bearing registration number TN 76 AL 6242. It is also clear that the petitioner is the owner of the vehicle and there is no dispute in it. The petitioner's vehicle was seized by the respondent police on 17.10.2020. The petitioner alleged that his vehicle is in open place without any protection and thereby his vehicle would get ruined by sun and rain and hence, sought for interim custody of the vehicle by relying on the guidelines issued by the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai** reported in **2003 (1) CTC 175**.



7. On perusal of records, the petitioner has already filed the petition in Crl.M.P.No.2093 of 2020 before the trial Court and the same was dismissed by the trial Court. The Criminal Revision Case was also dismissed by the Single Judge of this Court. The petitioner filed the second petition before the learned Judicial Magistrate and the same was again dismissed on 09.10.2023. Aggrieved by the said order, the present revision has been filed. Considering the decisions relied on by the petitioner reported in **1979 Cr.L.J. 1457 and 1983 Cr.L.J. 1194**, when a learned Magistrate passed order under Section 451, that order is not a final order but it is interlocutory and that may occasion a fresh order or a modified order. Whether the petitioner is involved in the case or not and the other allegations can be decided at the final stage of the case after let in oral and documentary evidence. It is reiterated in various decisions that the vehicle could not be kept idle open to sun and light.

8. The Hon'ble Apex Court in the case of “**Sunderbhai Ambalal Desai Versus State of Gujarat** reported in **2003 (1) CTC 175**”, had given guidelines in the cases of return of property to the owner. The vehicle is kept in the open exposing to various weather, further detention would cause damage to the vehicle, in result, the value of the vehicle would get diminished. Admittedly, the vehicle was seized on 17.10.2020 and the same



was kept in the custody of respondent for the past more than year. In the above circumstances, this Court is inclined to allow this Criminal Revision Case with conditions.

9. In the result, the Criminal Revision Case is allowed and the order of dismissal dated 09.10.2023 in respect of vehicle bearing registration No.TN 76 AL 6242 passed in Crl.M.P.No.12638 of 2023 on the file of the learned Judicial Magistrate No.1, Virudhunagar is set aside and the vehicle in question in this case is ordered to be returned to the petitioner on interim custody on the following conditions:

- (i) The petitioner shall execute a bond for Rs.2,00,000/- (Rupees Two lakhs only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.1, Virudhunagar;
- (ii) The petitioner shall deposit the Original R.C.Book of the vehicle before the trial Court;
- (iii) The petitioner shall file an affidavit with specific undertaking that the petitioner shall not involve in any illegal activity or any other offence;
- (iv) The petitioner shall not alienate the vehicle till the disposal of the case;



WEB COPY



CrI.R.C(MD)No.1223 of 2023

(v) The petitioner shall submit photographs of the vehicle along with Compact Disc duly certified under Section 65 B of the Indian Evidence Act;

(vi) The petitioner shall produce the vehicle on 1st working day of every English Calender month before the said Judicial Magistrate and shall produce the vehicle as and when required during the trial.

13.02.2024

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

To

- 1.The Judicial Magistrate No.1,
Virudhunagar.
- 2.The Inspector of Police,
I.P.R.E.C.,
Virudhunagar.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C(MD)No.1223 of 2023

P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.R.C(MD)No.1223 of 2023

13.02.2024