



Crl.R.C.(MD) No.1317 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.(MD) No.1317 of 2023

S.Baskaran

...Petitioner

Vs.

1.The Inspector of Police,
B-5, South Gate Police Station,
Madurai City.

2.The Inspector of Police,
PEW, TPK Road,
Crime Branch Premise,
Madurai City.

...Respondents

PRAYER : Criminal Revision Case has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the entire records and to set aside the order passed by the learned Judicial Magistrate No.IV, Madurai made in Cr.M.P.No.5376 of 2023 dated 10.11.2023 and to direct the learned Magistrate to return the vehicle auto bearing Registration No.TN 59 BV 3705 possessed by the second respondent police in Crime No.447 of 2023 on the file of the first respondent police to the custody of the petitioner herein.



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For Petitioner : Mr.A.B.Jeeva

For Respondent : Mr.R.Sivakumar

Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed against the impugned order dated 10.11.2023 in Cr.M.P.No.5376 of 2023 on the file of the learned Judicial Magistrate No.IV, Madurai and for a mandamus to the learned Judicial Magistrate to return the vehicle bearing Registration No.TN 59 BV 3705 which was seized by the second respondent police *qua* Crime No.447 of 2023 to the custody of the petitioner.

2. It is the case of the revision petitioner that originally, the petitioner was the owner of the vehicle being auto rickshaw bearing Registration No.TN 59 BV 3705 [hereinafter be referred to as 'said vehicle' for the sake of convenience and clarity] and the said vehicle was sold to one Vijayakumar. However, the Registration Certificate of the vehicle remains in the name of the petitioner. The said Vijayakumar rented out the said vehicle for daily rental to one Radha, who is the accused



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involved in Crime No.447 of 2023. The said Radha confessed before the respondent police that he has transported 120 liquor bottles in the said vehicle and therefore, he was arrested at the same place of occurrence. After registering the FIR, the vehicle was confiscated by the first respondent police. Thereafter, the petitioner moved an application in Cr.M.P.No.5376 of 2023 for interim custody of the said vehicle which is dismissed by the learned Judicial Magistrate No.IV, Madurai, by the order dated 10.11.2023. Aggrieved over the same, the present revision case has been filed by the petitioner.

3. Learned counsel for the petitioner submitted that the petitioner is not an accused in Crime No.447 of 2023. The petitioner's vehicle was already sold to Vijayakumar and the said Vijayakumar rented out the said vehicle to one Radha, who is the accused used the said vehicle for transporting illegal liquor bottles and hence, the vehicle was implicated in Crime No.447 of 2023. In the First Information Report, the reference to the vehicle and the liquor bottles are recorded. The respondent Police is duty bound to produce the vehicle before the concerned Magistrate and the Court below dismissed the petition for interim custody stating the reason



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that the confiscation proceedings have already been initiated.

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4. Learned counsel for the petitioner produced an order of this Court in Crl.RC.No.329 of 2022 ***[Soniya v. Inspector of Police, PEW]*** dated 18.03.2022, wherein this Court has allowed the criminal revision and granted interim custody of the vehicle to the petitioner therein with certain conditions. The relevant paragraphs of the order read as follows:-

“4. The learned counsel for the petitioner further submitted that 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”, this Court, considering the case of “David Versus Shakthivel, Inspector of Police-cum-Station House Officer, Dated 08.01.2010 in Contempt Petition No.1156 of 2020”, had given a finding to the effect that mere pendency of the confiscation proceedings is not a bar for granting the relief of interim custody of the vehicle and ordered return of vehicle. This case was followed by this Court in the case of “C.Srinivasan Versus State rep. by, The Inspector of Police, Manikandam Police Station, Trichy District in Crl.R.C.(MD)No.75 of 2019 and in the case of Sundaramoorthy Versus State rep by The Sub Inspector of Police, Vaippur Police Station, Vaippur Tiruvarur District in Crl.R.C.No. 1113 of 2015”. Hence, it was submitted that it is a consistent view of this Court to grant interim custody of the vehicle to the owner, who is not an accused.



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5. Recently this Court in the case of “B.Sathish Kumar Versus State rep. by Inspector of Police, Anaicut Police Station, Kancheepuram in Crl.R.C.No.648 of 2019, by order dated 13.08.2019”, ordered return of vehicle to the owner. Thus, this Court in the cases of vehicles involved in prohibition offences and the offences under the Indian Penal Code, ordered return of vehicle to the owner. Hence, he prayed that the petitioner to be entrusted with the interim custody of the vehicles. Further, the vehicle of the petitioner is kept in the open space exposed to vagaries of weather and thereby, the value of the vehicle is getting diminished. Further, he placed reliance on the citation of the Hon'ble Apex Court in the case of “Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290”, wherein guidelines were issued in the cases of return of property to the owner.

6. The learned Additional Public Prosecutor appearing for the respondent submitted that the confiscation proceedings already initiated by the Inspector of Police, Acharapakkam Police Station, Chengalpattu District and produced the vehicle to the Deputy Superintendent of Police, (PEW). Thereafter, the Deputy Superintendent of Police (PEW) in C.No. 10-43/DSP/PEW/CPT/2022 dated 16.02.2022 issue a notice to the petitioner, the petitioner received the same on 26.02.2022. The learned Additional Public Prosecutor apprehends that if the vehicle is returned to the petitioner, she would continue to indulge in such activities. It would be appropriate to await the outcome of the confiscation proceedings.



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7. This Court considered the rival submissions and perused the materials available on record.

8. It is not in dispute that the petitioner is the owner of the vehicle viz., Mahindra Bolero Car bearing Registration Number: TN-12- AQ-0670. It is seen that from 07.02.2022, the vehicle is kept in open space exposing to sunlight and rain 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. 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.

9. In view of the aforesaid reasons, this Court is constrained to set aside the order passed by the learned Judicial Magistrate No.II, Madhuranthagam, Chengalpattu District made in Crl.M.P.No.78 of 2022, dated 11.02.2022 and the Criminal Revision is allowed.

10. The Deputy Superintendent of Police, Prohibition Enforcement Wing, Chengalpattu District is directed to return the vehicle, viz., Mahindra Bolero Car bearing Registration Number: TN-12- AQ-0670 to the petitioner subject to petitioner executing bond before the Judicial Magistrate No.II, Madhuranthagam,



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Chengalpattu District on the following conditions:-

(i) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove her ownership and the learned Magistrate, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle;

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

(iii) The petitioner is directed to deposit a sum of Rs. 10,000/- (Rupees Ten Thousand only), as non-refundable deposit through RGS/NEFT in favour of the “The Dean, Rajiv Gandhi Government General Hospital, Chennai, bearing A/c. No. 10273425961, State Bank of India, Park Town (Chennai), 68, Evening Bazaar Road, Chennai, IFSC:SBIN0001856, while executing sureties, proof of deposit to be produced.

(iv) The petitioner shall also give an undertaking that she will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent 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.

(v) The petitioner shall participate in the confiscation proceedings and shall produce the vehicle before the confiscation authority. This order is subjected to the confiscation proceedings.”

Hence, the learned counsel for the petitioner would pray that the said vehicle can be ordered to be returned to the owner of the vehicle which would be subject to the confiscation proceedings.



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5. Contrary to the submissions of the learned counsel for the petitioner, learned Government Advocate (Crl.Side) for the respondents relied upon another order of this Court in Crl.R.C.No.564 of 2022 ***[M/s.Friends Brothers Enterprises Pvt. Ltd., v. The Inspector of Police, PEW]*** dated 10.06.2022, submitted that this Court has taken a view that it may not be open for entrustment of interim custody pending confiscation proceedings. He further submitted that the Hon'ble Supreme Court of India in its judgment in ***State of M.P v. Uday Singh*** reported in ***[(2020) 12 SCC 733]*** has categorically held that the jurisdiction under Section 451 of Cr.P.C. was not available to the Magistrate, once the authorised officer initiated confiscation proceedings and therefore, he prayed for dismissal of this revision.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. It is the case where the petitioner himself admitted the fact that the said vehicle was sold to one Vijayakumar by him on 17.09.2023 and



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the said vehicle was given to the accused Radha on a daily rental basis.

Thereafter, the accused was alleged to have used the said vehicle for illegal transportation of liquor bottles and thereby it was implicated in the case.

8. Considering the facts and circumstances of the case and by following a decision of the Hon'ble Supreme Court of India in ***State of M.P v. Uday Singh*** (supra), this Court has inclined to dispose of this Criminal Revision on the following terms:-

(i) Since the confiscation proceedings are pending, neither the petitioner nor the owner of the said vehicle is not entitled for return of the vehicle;

(ii) The respondent is directed to complete the confiscation proceedings within a period of one month from the date of receipt of a copy of this order;

(iii) If the confiscation proceedings are not completed within the date stipulated above, then the owner of the vehicle will be entitled for return of the custody of the vehicle on the following conditions:-

(a) The order of the learned Judicial Magistrate No.IV, Madurai, in Crl.M.P.No.5376 of 2023, dated 10.11.2023, is set aside.



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(b) The owner of the vehicle will be entitled for return of the Auto-rickshaw bearing registration No.TN 59 BV 3705;

(c) The owner of the vehicle shall produce the original RC Book of the vehicle and other relevant records to prove his ownership and the learned Judge, on perusal of the RC book and other records, retaining the photocopies of the same, shall return the original documents to the owner of the vehicle with a view to use the vehicle;

(d) The vehicle owner shall not alter or alienate the vehicle in any manner till adjudication is over;

(e) The owner of the said vehicle 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 and by the court below, as well as by the District Collector of the District or authorized officer on behalf of the Government;



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(f) The petitioner/owner of the vehicle shall participate in the confiscation proceedings, if any, initiated and shall produce the vehicle before the confiscation authority. This order is subjected to the confiscation proceedings.

(g) The owner of the said vehicle shall not indulge in the similar offence either by using the present vehicle or any other vehicle. If he is found to be involved in any of similar offence in future either by way of using the present vehicle or through any other vehicle, this order of returning the present vehicle (Auto rickshaw bearing registration No.TN 59 BV 3705), shall stand automatically vacated.

01.02.2024

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

PKN



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To

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B-5, South Gate Police Station,
Madurai City.
- 2.The Inspector of Police,
PEW, TPK Road,
Crime Branch Premise,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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VIVEK KUMAR SINGH, J.

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