



Crl.O.P.(MD)No.21812 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2024

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.21812 of 2024

Sasi

... Petitioner

Vs

The State of Tamilnadu,
Rep by the Inspector of Police,
Devathanapatti Police Station,
Theni District.
Crime No.93 of 2024.

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to the order, dated 21.11.2024 in Crl.R.P.No.15 of 2024 on the file of the Principal Sessions Judge, Theni confirmed by the order, dated 29.04.2024 in Crl.M.P.No.550 of 2024 on the file of the learned Judicial Magistrate, Periyakulam to return the vehicle bearing registration No.TN 31 T 5726.

For Petitioner : Mr.M.Prabu

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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ORDER

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The Criminal Original Petition has been filed to set aside the order, dated 21.11.2024 in Crl.R.P.No.15 of 2024 on the file of the learned Principal Sessions Judge, Theni confirmed by the order, dated 29.04.2024 in Crl.M.P.No.550 of 2024 on the file of the learned Judicial Magistrate, Periyakulam to return the vehicle bearing Registration No. TN 31 T 5726.

2.The petitioner, who is an accused in Crime No. 93 of 2024 for the offence punishable under Section 4(1)(a) of TNP Act filed a petition for return of property in Crl.M.P. 550 of 2024 before the Judicial Magistrate Periyakulam, which was dismissed on 29.04.2024. Aggrieved by the same, he has filed a revision before the Sessions Court, Theni in Crl.R.P.No.14 of 2024 and the same was dismissed by Order, dated 21.11.2024. Against which, the present petition has been filed.

3.The case of the petitioner is that during the vehicle check-up conducted by the respondent Police on 08.06.2022, his vehicle Maruti Van bearing Registration No.TN-31-T-5721 was intercepted by the



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respondent police. On checking the vehicle in the rear seat, two travel bags were found and from there various brand Rum bottles as well as liquor bottles were seized. The petitioner was arrested and the alleged vehicle was also seized in this case.

4.It is the contention of the learned counsel for the petitioner that the petitioner was not aware about the contents in the travel bag. The petitioner has not committed any smuggling of liquor bottles. When the respondent Police intercepted the vehicle for check-up, without any resistance, he allowed the respondent Police to check the vehicle, since he was not aware about the contents ie., liquor bottles in the bag. The petitioner is a owner-cum-driver. He used to transport the tourist persons from Hill to Plains and thereby making his livelihood. At the time of returning from Plain, he used to carry things, which were given and handed over the same to the persons in the Hill. Likewise, he had collected the alleged travel bags from the Plain and kept it in the vehicle. However, without considering his submissions, both the Courts below dismissed the petition only for the reason that confiscation proceedings have been initiated by the respondent Police. So far, no notice has been



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issued to the petitioner. The petitioner is very much available in the same address.

5.The learned Additional Public Prosecutor submitted that the respondent police is now taking steps to confiscate the vehicle under Section 44 of TNP Act. The vehicle is likely to be confiscated and the proceedings have been initiated. If the vehicle is returned to the petitioner, he would commit the similar kind of offence in the future. Hence, prays to dismiss the petition.

6.Heard the learned counsel on either side and perused the materials available on record.

7.On perusal of records, it is stated by the respondent Police that as early as on 29.04.2024, steps have been initiated to confiscate the vehicle. However, it is informed that on 30.04.2024, notice has been served to the petitioner, thereafter, it is left as it is. It is almost 9 months gone from the date of serving of notice, but the confiscation proceedings have not yet been proceeded by the respondent Police. Keeping the



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vehicle without any use and exposing it to weather condition, would only diminish the value of the vehicle. The petitioner seems to be the owner-cum-driver and making his livelihood using his vehicle by transporting persons and goods from Hill to Plain. In this regard, this Court has relied upon the decision in ***Sunderbhai Ambalal Desai Vs State of Gujarat***, reported in ***2003(3) KLT 1089 (SC) = 2002(10)SCC 283***.

8.Considering the aforesaid facts and circumstances of the case, this Court is inclined to set aside the order in Crl.R.P.No.15 of 2024, dated 21.11.2024 on the file of the learned Principal Sessions Judge, Theni and the order, dated 29.04.2024 in Crl.M.P.No.550 of 2024 on the file of the learned Judicial Magistrate, Periyakulam and this Court granted an order interim custody of vehicle to the petitioner on the following terms and conditions:

- 1. The petitioner shall produce the original R.C. Book of the vehicle and directed to give an undertaking affidavit to the effect that he will not alter or change the properties of vehicle and he will ensure that in future the alleged vehicle will not be used for any illegal activities, before the learned*



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Judicial Magistrate, Periyakulam.

- 2. The petitioner shall execute a bond for a sum of Rs. 5,000/- (Rupees Five Thousand Only) with one surety to the satisfaction of the concerned Court;*
- 3. The petitioner shall produce the vehicle before the respondent and the trial Court as and when required;*
- 4. If any of the above conditions are violated, this order will stand automatically cancelled.*

9. With the above directions, this Criminal Original Petition stands disposed of.

12.12.2024

NCC : Yes / No
Index : Yes / No
PNM



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To

1.The Judicial Magistrate, Periyakulam

2.The Inspector of Police,
Devathanapatti Police Station,
Theni District. Crime No.93 of 2024.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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M.NIRMAL KUMAR, J.

PNM

ORDER IN
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