

Karuppasamy Vs. State Rep by

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Court : Chennai

Decided On : Aug-06-2014

Judge : P.R.Shivakumar

Appellant : Karuppasamy

Respondent : State Rep by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 06.08.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Criminal Revision Case (Md.No.355 of 2014 Karuppasamy ..Petitioner versus State rep by Inspector of Police, Rajapalayam North Police Station, Virudhunagar District in Crime No.322 of 2014 ..Respondent Petition filed under Section 397 read with 401 Cr.P.C., to call for the records and set aside the order passed by the Court of the Additional District and Sessions Judge/Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukottai in Crl.M.P.No.901 of 2014 on 10.07.2014 and allow this Criminal Revision Case.

!For Petitioner : Mr.G.Marimuthu ^For Respondent : Mrs.S.Prabha, Government Advocate.

(Crl.Side) :

ORDER

The revision petitioner is the owner of the motor vehicle namely, a Tata Sumo Car bearing Registration No.TN-24-Q-2806 which was allegedly used by the accused in Crime No.322 of 2014 registered on the file of the Inspector of Police, Rajapalayam North Police Station for the offence punishable under Sections 8(c) read with 20(b)(ii)(B) of NDPS Act, 1985.

As many as four persons have been arraigned as accused in the said case.

The petitioner does not figure as an accused in the said case.

The said vehicle was seized by the police on the premise that it was used by the accused persons, out of whom one is the father in law of the petitioner herein, for transporting 49.600 Kgs of ganja.

The seized vehicle was produced before the Additional District and Sessions Judge/Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukottai and remanded as a case property.

Thereafter, the petitioner filed a petition in CrI.M.P.No.901 of 2014 claiming that the interim custody of the vehicle be given to him pending investigation and pending disposal of the criminal case.

The said petition was resisted by the respondent police contending that the vehicle should not be released as it was used for transporting commercial quantity of ganja and that the investigation and the trial of the case might lead ultimately to the confiscation of the vehicle.

It was also contended that the release of the vehicle would encourage the petitioner to allow the use of the vehicle for committing similar offences.

2.The learned Additional District and Sessions Judge/Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukottai, after hearing, sustained the objections raised by the police and dismissed the petition filed by the petitioner herein under Section 451 Cr.P.C.3.Questioning the legality and sustainability of the said order, the petitioner has approached this Court with the present revision under Section 397 read with Section 401 Cr.P.C.4.The submissions made by

Mr.G.Marimuthu, learned counsel for the petitioner and by Mrs.S.Prabha, learned Government Advocate (Criminal Side) representing the respondent Police are heard.

The copy of the order impugned in the revision and the copies of the documents produced in the form of typed set of papers are also perused.

5.It is the contention of the learned counsel for the petitioner that the order of the Court below in refusing to give the interim custody of the vehicle to the petitioner is in total disregard to the guidelines issued by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai .versus State of Gujarat* reported in 2003(1) CTC175

6.On the other hand, learned Government Advocate (Criminal Side) would contend that since there is every likelihood of the vehicle being confiscated, the release of the vehicle in favour of the petitioner by entrusting the interim custody of the vehicle to him will defeat the said object.

It is her contention that the offence for the commission of which the vehicle was allegedly used being a grave one punishable with a minimum punishment of 10 years imprisonment and also a minimum fine of Rs.1 lakh, there is every possibility of the petitioner secreting the vehicle and causing disappearance of the vehicle.

It is also her contention that the vehicle, if released, may also be used for commission of similar offences.

7.Though the said contentions that the proceedings may result in confiscation of the vehicle and that there is likelihood of the petitioner secreting the vehicle or allowing the vehicle to be used for commission of similar offence cannot be rejected as baseless, that alone shall not be enough to sustain the order of the Court below declining the prayer made by the petitioner seeking interim custody of the vehicle pending investigation and pending trial of the case.

The entrustment of the interim custody of the vehicle to the petitioner will not in any way take away or abridge the power of the Court to pass an order of confiscation at the conclusion of the proceedings.

It shall also not take away the power conferred on the competent authority appointed by the Central Government under Section 68-D of the Act for taking steps for the forfeiture of the property, if such property is believed to have been acquired illegally with the funds raised by the illicit trafficking of the contraband.

8. Admittedly, no such proceedings has been initiated as on today for the confiscation of the vehicle.

As such, it shall be a criminal waste of an asset of the country to allow the vehicle to get deteriorated in its value and utility by exposing it to rain and sun light in the Court campus or in the premises of the Police Station.

9. As rightly contended by the learned counsel for the petitioner, the learned Additional District and Sessions Judge/Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukottai failed to consider the scope of the directions issued by the Hon'ble Supreme Court in the decision cited supra providing guidelines as to how the properties seized in criminal cases are to be disposed of.

10. For all the reasons stated above, this Court comes to the conclusion that the order of the Court below cannot stand to scrutiny of this Court and it deserves to be set aside.

Accordingly, the Criminal Revision Case is allowed and the order of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukottai is set aside.

The vehicle bearing Registration No. TN-24-Q-2806 seized and produced in Crime No. 322 of 2014 shall be released and the interim custody of the same shall be given to the petitioner on the following conditions: i) The Petitioner shall produce proof of ownership of the vehicle; ii) The Petitioner shall execute a bond for a sum of Rs. 2,00,000/- (Rupees two lakhs only) with two sureties to the satisfaction of the Court below; iii) The petitioner shall surrender the R.C. Book and the Court below is at liberty to return the R.C. Book for renewal of the registration or for insuring the vehicle.

The R.C Book can be obtained from the Court by filing a petition and after the accomplishment of the purpose, the same should be returned to the Court; and iv) The petitioner shall also file an affidavit of undertaking to the effect that: a) he will not alienate the vehicles without obtaining an order from the Court below; b) he will produce the said vehicles before the Court as and when summoned to produce the same; and c) no major alteration, excepting the necessary repairs to make the vehicle road worthy, shall be made.

To 1.The Inspector of Police, Rajapalayam North Police Station, Virudhunagar District 2.The Additional District and Sessions Judge /Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukottai.

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