

**Malliga Vs. State Rep. by**

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**SooperKanoon Citation :** [sooperkanoon.com/1169348](http://sooperkanoon.com/1169348)

**Court :** Chennai

**Decided On :** Sep-25-2014

**Judge :** P.R.Shivakumar

**Appellant :** Malliga

**Respondent :** State Rep. by

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 25.09.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Crl.R.C (Md).No.404 of 2014 Malliga ..Petitioner/ Petitioner versus State Rep.

By The Inspector of Police Kurumbur Police Station Thoothukudi District Cr.No.239/.2014 ..Respondent/ Respondent Prayer Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C against the order passed by the learned Judicial Magistrate Court, Srivaikundam in Crl.M.P.No.6185 of 2014 on 11.09.2014 dismissing the petition filed by the petitioner seeking for the relief of the return of the vehicle (Omni Bus) bearing Regn.No.PY01CC3366 under Section 457 Cr.P.C.!For Petitioner : Mr.K.Samidurai ^For Respondent : Mrs.S.Prabha Government Advocate (Crl.side) :

**ORDER**

This Criminal Revision case has been filed against the order of the learned Judicial Magistrate, Srivaikundam dated 11.09.2014, made in Crl.M.P.No.6185 of

2014 on the file of his Court.

The said petition was filed under Section 457 of the Code of Criminal Procedure seeking delivery of the Omni-bus bearing Regn.

No.PY01CC3366 to keep its interim custody, pending investigation and pending disposal of the criminal case registered on the file of the Kurumbur Police Station, Thoothukudi District in Cr.No.239 of 2014 of the said Police Station.

The said case was registered for alleged offences punishable under Sections 4(1)(aa).4(1-A) and 14A of the Tamil Nadu Prohibition Act, 1937.

2.The averments in the FiRs.Information Report are that a large quantity of liquor was transported from Puducherry to Kanyakumari in a Tata Magic Van; that when the said vehicle was intercepted by the respondent police and the contraband found therein was seized, the driver of the vehicle made a confession revealing the fact that 124 bottles of liquor of different varieties were being transported in the above said Omni-Bus and that pursuant to the aforesaid information, the Omni-bus was stopped and the contraband found therein was seized.

Besides the seizure of the contrabands found in the said vehicles, the vehicles also were seized by the police.

3.We are not concerned with the Tata Magic vehicle, because the present revision arises out of the dismissal of the petition filed for the delivery of the above said omni-bus alone.

CrI.M.P.No.6185 of 2014 came to be filed under Section 457 of the Code of Criminal Procedure by the revision petitioner for getting interim custody of the omni-bus, because after seizure, the vehicle was not produced before the Magistrate and the seizure alone was intimated to the Magistrate.

4.The learned Judicial Magistrate, after hearing, dismissed the petition on the sole ground that an objection was raised by the respondent stating that proceeding for confiscation of the vehicle was initiated and the same was pending on the file of the Prohibition Officer, namely the Additional Superintendent of Police, Prohibition

Wing, Thoothukudi.

As against the said order dismissing the above said petition, Viz., CrI.M.P.No.6185 of 2014, the present Criminal revision case has been filed.

5.The arguments advanced by Mr.K.Samidurai, learned counsel for the petitioner in the criminal revision case and Mrs.Prabha, learned Government Advocate (Criminal side) representing the respondent herein are heard.

The copy of the order of the court below and the documents produced in the form of typed set of papers are also perused.

6.

It is the contention of the learned counsel for the petitioner that the vehicle having been seized about a month earlier, will get deteriorated in its value and utility if allowed to lie idle in the police station, exposed to light and rain and that when such vehicles are seized in connection with criminal cases and the registered owner of the vehicle come forward with petitions seeking interim custody of the vehicle either under Section 451 or under Section 457 of the Code of Criminal Procedure, such petition should be liberally dealt with in accordance with the guidelines issued by the Honourable Supreme Court in 2003 SCC (Cri) 1943, Sundarbhai Ambalal Desai versus State of Gujarat.

7.It is the further contention of the learned counsel for the petitioner that the driver of the vehicle, which was plied regularly between Puducherry and Kanyakumari was in charge of it and that any one of the passengers could have booked the luggage without informing the driver that the luggage contained bottles of liquor and that the mere fact that the person who was caught by the police, while transporting liquor in the Tata Magic car, made a confession that some more bottles were being transported in the omni-bus would not be enough to make a prima facie case that the driver was also an accomplice.

It is the further contention of the learned counsel that the petitioner, being the owner of the vehicle, had given proper instructions to the driver and the driver would have followed such instructions and that even if the driver would have

committed any violation disregarding the instructions, the same should be considered by the Prohibition Officer/authorized officer before passing an order of confiscation.

The above said aspects, in a way are concerned with the merits of the case.

The case has been registered not only for an offence under Section 4(1)(aa) and 4(1-A).but also under Section 14A of the Tamil Nadu Prohibition Act, 1937.

However, the learned counsel for the petitioner would point out the fact that, without there being any prima facie material, at the inception itself, the case came to be registered for an offence under Section 4(1-A) also.

8.It is the further contention of the learned counsel for the petitioner that the mere fact that there is a provision enabling the prohibition officer or the officer authorized by the State Government to order confiscation of the vehicle and that such confiscation, shall not be a ground on which the Courts shall deny the relief claimed under Section 451 or 457 of the Code of Criminal Procedure.

The learned counsel for the petitioner contends that no notice was served on the petitioner in the proceedings allegedly initiated by the Additional Superintendent of Police, Prohibition Wing, Thoothukudi for the confiscation of the vehicle and that under the said circumstances, the dismissal of the petition seeking interim custody of the vehicle should be held to be erroneous and liable to be set aside by this Court in exercise of its power of revision.

9.The learned Government Advocate (Crl.side).who represents the respondent, would fairly admit that even if the interim custody of the vehicle is given to the petitioner, that will not provide any impediment for the passing of an order under Section 14(4) of the Tamil Nadu Prohibition Act, confiscating the said vehicle and that on passing of such an order, the surrender of the vehicle can be commanded.

10.In a similar matter, namely Crl.R.C (MD).No.130 of 2012, Suryakala versus State, rep.

By Inspector of Police, Prohibition and Enforcement Wing, Thanjavur, this Court took a view that even the passing of a preliminary order would not take away the power of the Magistrate to pass an order either under Section 451 or 457 of Criminal Procedure Code.

In yet another case namely CrI.R.C (MD).No.501 of 2011 between Sakthi Devi and the State rep.

By Inspector of Pollice, Thittacherry Pollice Station, Nagapattinam Police Station, it was observed that the initiation of the proceedings under Section 14(4) of the Tamil Nadu Prohibition Act shall not be a bar for exercising the power under Section 451 or 457 Cr.P.C, but such exercise of power should be made with due care and caution, keeping in view the spirit of Section 14(4) of the Tamil nadu Prohibition Act.

11.Section 14(4) of the Tamil Nadu Prohibition Act empowers the Collector or the other Prohibition Officer in-charge of the district or any other officer authorized by the State Government in that behalf, if he is satisfied that an offence has been committed against the Tamil Nadu Prohibition Act, irrespective of the fact whether prosecution has been instituted or not and without prejudice to any other punishment to which the offender may be subjected to, order confiscation or any animal, vessel, cart or other vehicle used in the commission of the offence.

But the proviso prescribes the procedure to be followed for confiscation as a condition for passing valid order of confiscation.

It contemplates issuing a notice in writing, informing the owner or the person from whom such vehicle is seized, of the grounds on which it is proposed to confiscate the said vehicle.

An opportunity of making representation in writing against the ground of confiscation within a reasonable time, not exceeding 14 days should be specified in such a notice and a reasonable opportunity of being heard should be given to such person.

It has also been provided in the proviso that the owner or the person from whom such vehicle is seized shall be given an option to pay the amount not exceeding the market value of such vehicle is seized shall be given an option to pay the amount not exceeding the market value of such vehicle in lieu of its confiscation.

Sub-Section 5 also provides for preferring an appeal against such order of confiscation.

12.

When such stringent conditions are prescribed for passing a valid order of confiscation, there mere submission of the report before the Prohibition Officer and the initiation of the proceedings for confiscation by the Prohibition Officer shall not be enough to exercise the discretion of the Court either under Section 451 or under Section 457 Cr.P.C against the owner of the vehicle, who claims interim custody of the same.

The balance of convenience should also be taken into account.

If the vehicle is allowed to lie idle for any further period, as rightly contended by the learned counsel for the petitioner, he may not be in a position to get the vehicle in good condition, if he exercise his option to pay the amount not exceeding the market value of the vehicle in lieu of confiscation as provided under sub- section 2 to proviso 14(4).13.Under such circumstances, this Court deems it appropriate to held that the petitioner, being the owner of the vehicle, shall be entitled to the interim custody of the vehicle, pending investigation or pending passing of an order of confiscation in accordance with Section 14(4) of the Tamil Nadu Prohibition Act.

The learned Judicial Magistrate, Srivaikundam, Thoothukudi District did not consider the above said aspect in proper perspective and the same resulted in an order, which according to this Court, has got to be interfered with, set aside and modified.

14.The learned Government Advocate (Crl.side) has submitted that in any event, if the Court comes to the conclusion that the interim custody of the vehicle should be

given to the petitioner, it may be done imposing necessary conditions for keeping the vehicle in tact and for the production of the vehicle as and when directed by the Court or the Prohibition Officer on passing of the order of confiscation.

The submission of the learned Government Advocate (Crl.side) is accepted and this Court decides to pass an order directing entrustment of the interim custody of the vehicle to the petitioner, subject to conditions.

15.

In the result, the order of the Judicial Magistrate, Srivaikundam dated 11.09.2014 made in Crl.M.P.No.6185 of 2014 dismissing the said petition is set aside and the said petition shall stand allowed.

Interim custody of the vehicle, namely omni-bus bearing Regn.No.PY01CC3366, which was seized by the respondent police in Cr.No.239 of 2014 is directed to 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.25,000/- along with two sureties to the satisfaction of the learned Judicial Magistrate, Srivaikundam; iii)The petitioner shall surrender the R.C.Book and the learned Judicial Magistrate, Srivaikundam 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 vehicle without obtaining an order from the learned Judicial Magistrate, Srivaikundam; b) he will produce the said vehicle 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.

v) The petitioner shall also given an undertaking to produce the vehicle as and when required by the District Collector/ Prohibition Officer in-charge of the District or Officer authorised in that behalf by the Government.

To 1.The Judicial Magistrate Srivaikundam 2.The Inspector of Police Kurumbur Police Station Thoothukudi District 3.The Additional Public Prosecutor Madurai Bench of Madras High Court Madurai

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