Nagaswami Vs. State

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Court : Chennai

Decided On : Sep-16-1994

Reported in : 1995CriLJ1658

Judge : Janarthanam, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 482

Appeal No. : Cri Original Petition No. 5582 of 1994

Appellant : Nagaswami

Respondent : State

Advocate for Def. : A.N. Rajan, Govt. Adv.

Advocate for Pet/Ap. : T. Sudanthiram, Adv.

Judgement :
ORDER

1. An autorickshaw bearing registration number TN-01-D-4017 in the process of being utilised for transport of illicit arrack was stated to have been seized by the Inspector of Police, Kavangarai Police Station, Kavangarai, Chengalpettu MGR District (respondent) on 7-6-1994 and that apart, one Nageswari (petitioner), claiming to be the owner of the said vehicle and three others were bodily present in the said vehicle. All the four were stated to have been taken into custody

besides seizing the illicit arrack. A case in Crime No. 496/94 had been registered for an alleged offence under S. 4(1)(a) of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937 as subsequently amended for short 'the Act') against all those four persons.

2. The seizure of the auto was stated to have been reported to the Court and the custody of the same had been entrusted to the Deputy Superintendent of Police, Thiruvotriyur, who, in turn, for the purpose of safe custody, entrusted the said vehicle to the respondent.

3. The petitioner and three other accused compounded the offence by paying money in a specified sum under the sanguine provisions adumbrated under S. 24-D of the Act and consequently, they were not prosecuted before Court.

4. The petitioner filed an application in Crl. M.P. No. 2176 of 1994 on the file of the Judicial Magistrate, Thiruvotriyur praying for interim custody of the vehicle. The same had not been granted by order dated 22nd June, 1994. Aggrieved by the said order, the petitioner resorted to the present action on 8th July, 1994 under S. 482 of the Code of Criminal Procedure praying for the return of the vehicle to her custody, pending further proceedings.

5. Subsequently, the Superintendent of Police, Prohibition and Enforcement Wing Chengai MGR District, was stated to have issued a show cause notice dated 23-8-1994, as to why the said vehicle should not be confiscated and the notice so issued, it is said, had been received by the petitioner on 30-8-1994.

6. Mr. T. Sudanthiram, learned counsel appearing for the petitioner, with all force and vehemence, would contend that once an offence under the relevant provisions of the Act had been lawfully compounded under the salient provisions adumbrated under S. 24-D therein, all further proceedings, inclusive of the proceedings for confiscation must have to be terminated and therefore it is that the vehicle seized ought to have been returned to the petitioner-owner.

7. Mr. A. N. Rajan, learned Government Advocate representing the respondent would, however, repel such a submission.

8. The tenability or otherwise of the rival submissions, as above, may now fall for consideration, in the arena of discussion. Sub-sec. (1) of S. 24-D of the Act gives power to any Prohibition Officer specifically empowered by the State Government to accept by way of composition of such offence, a sum of money not exceeding two thousand rupees; but not less than five hundred rupees. Sub-sec. (2) thereof further prescribes, that on payment of such sum of money to such officer, the accused person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person. By way of elaboration it may be stated that further proceedings in respect of offence against a person accused of an offence alone can be terminated and not other proceedings, in respect of the offence, that is to say, the proceedings by way of confiscation of the vehicle said to have been utilised in the alleged commission of the offence.

9. A further survey of the salient provisions adumbrated under Ss. 29, 32(b) and 51 of the Act points out, in a clinching fashion, the powers of seizure and detention of the vehicles utilised in the commission of the offences under the Act, inhering in favour of the personnel specified therein and the detention of the seized vehicle by the competent personnel is permissible till an order, either by a competent Court or other officers empowered under this Act, releasing the vehicle is made.

10. Further, the view, as projected by sub-sec. (2) of S. 24-D is further reinforced, by the provisions contained in Sub-sec. (4) of S. 14, according to which, proceedings for the prosecution of the offender for the alleged commission of the offence and proceedings for confiscation of the vehicle said to have been utilised in the commission of the offence are separate and distinct, not having any sort of a connection with the other, in the sense that it is legally permissible to initiate confiscation proceedings of the vehicle, without even launching a prosecution against the offender-accused or both the proceedings may be initiated simultaneously. In view of the above provisions, the submission, as projected by learned counsel for the petitioner must have to face dismal failure.

11. An incidental submission had also been made by the said learned counsel for the petitioner that even if the confiscation proceedings are allowed to go, there is nothing wrong in ordering for the interim custody of the said vehicle to the

petitioner, pending further proceedings therefor. Even the grant of such a relief, on the facts and in the circumstances of the case, I feel, may not be proper. It is not as if the said vehicle, in the present circumstances of the case, is likely to be detained for long, exposed to sun and rain, without any sort of protection thereby, impairing its value. As already indicated, a show-cause notice dated 23-8-1994 as to why the vehicle in question should not be confiscated had already been issued and the same had been received by the petitioner on 20-8-1994. What further remains to be done, is, if the explanation had already been filed, same has to be considered and final orders to be passed. If she has not filed the explanation, despite giving of adequacy of opportunity it would be proper for the Officer, who issued the show-cause notice, to further proceed in the matter, in the sense of passing of final order, on the materials available on record. If the final order results in favour of the petitioner, nothing need be done by her. On the other hand, if it goes against her, she has to file the statutory appeal, if she so desires, before the Court of Session, as contemplated by the relevant provisions of the Act. If such an appeal is preferred, it is equally perm for her to file an application seeking interim custody of the vehicle, pending disposal of such appeal and the Court of Session, on the materials available on record, may utilise its discretion in passing an order one way or the other. In such state of affairs, I rather feel it is not proper to order for the interim custody of the vehicle to the petitioner, at this stage.

12. The petitioner, as such, deserves to be dismissed and accordingly, the same is dismissed.

13. Petition dismissed.