

IN THE COURT OF JUDICIAL MAGISTRATE No. V, MADURAI

Present: E. Pravin Kumar, B.A.,B.L.,

Judicial Magistrate No.V, Madurai

Friday 12th day of February 2021

Crmp.No.1133/2020

Salim,

S/o.Kathar

...Petitioner

vs

1. Food Safety and Drugs Inspector,
Madurai.

2. Inspector of police,
S.S.colony L & O Police Station,
Madurai.

... Respondents

For petitioner/accused: Thiru.P.Marthandan, Advocate

For Respondent/Complainant: Mrs.R.Thilagarani,M.L.,Grade II Assistant Public Prosecutor

12.02.2021

ORDER

1. This petition is filed U/s.457 and 451 IPC For returning of the property viz Open type Four wheeler bearing in Registration No.TN 63 K 7164 remanded in R.P.R.No.33/2021 as interim custody to the petitioner.

2. Notice issued and the prosecution has filed their reply.

3. The learned counsel for the petitioner would contend that the case property belonged to the petitioner. This petitioner is the owner of the property in this case. The property was seized by SS Colony police station for carrying prohibited tobacco items and the property was handed over to concerned food safety department and then remanded in this court in RPR.. The counsel would contend that the petitioner is no way involved in this case and the food safety officer has no power to confiscate the vehicle, hence considering all the circumstances the petitioner prays that this petition may be allowed. The petitioner also submitted authorities Rahim Vs State of Kerala, 17 July 2002, Hon'ble High Court of Kerala, High Range Marketing Vs State of Kerala, on 24 October 2014, Hon'ble High Court of Kerala, Arunachalam Vs The District Revenue Officer 17 October 2019, Hon'ble High Court of Madras, that vehicle seized by food safety officers can be returned .

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4. On the other hand the stated that the prosecution side object to allow this petition and subject to condition may be imposed.

5. This court has taken into consideration all the above facts and circumstances of the case and gravity of offence. On perusal of records it can be seen that the property was seized by SS colony police station for carrying prohibited tobacco items and was handed over to concerned Food Safety Department and then the property was handed over in court. The prosecution filed citation stating the vehicle seized must not be returned . Hon'ble Madras High Court in Urmin Products Pvt. Ltd Va The Commissioner of Food Safety, Commissioner of Police, Chennai in W.P. No. 33531 of 2019 and W.M.P. No. 33991, 33993 of 2019 dated 02-12-2019 has stated as below” Merely because the word transport had been omitted in the act, it would not imply that the petitioner can merrily transport the products within the state of Tamil Nadu for distribution..The notification of the Tamil Nadu Government Gazette published on 23-05-2015 prohibiting manufacture, storage, distribution and the further notification dated 23-05-2016 and 23-05-2017 prohibiting manufacture of gutkha, panmasala and other chewing products had come for consideration.... The Honourable First Bench of this court had specifically directed the respondent therein to implement the said notification in letter and spirit.”

6. On perusal it can be seen that the validity of notification regarding transport of gutka products were challenged and decided in the citation relied by prosecution. The fact of return of property seized under the Food safety act was not decided. On the other hand the petitioner relied on the citation of Hon'ble Kerala High Court in High Range Marketing Vs State of Karnataka on 24th October 2014 wherein it is decided that vehicle seized by the Food Safety Officer was returned. Further the petitioner's counsel relied on the citation of Hon'ble High Court of Madras in Selvam Vs State dated 3rd february 2012 stating the powers of Magistrate and the procedures to be followed u/sec. 457 and 451 Crpc.. Further the petitioner relied upon the citations of Hon'ble High Court of Madras, in Arunachalam Vs The District Revenue Officer 17 October 2019, the food safety officer has no power to seal the premises.

7. Thus considering the facts and circumstances, arguments and citations relied on both side and also the property happens to be a motorized vehicle, if it is kept unused for a long time, the engine may get struck up and the value of the property may get reduced and exposed to sun and light and its value would be deteriorated. Further the Hon'ble Supreme Court of India in the recent decision as reported in 2003(1) C.T.C page 175-Sundarbhai Ambalal Desai Vs.state of Gujarat has laid down certain guidelines to the Magistrates to hand over the properties at the pre-trial stage. Taking all the facts and circumstances of this case and guidelines issued by the Hon'ble Supreme Court of India it will be just and proper to hand over the property to the petitioner herein as interim custody. After all, the petitioner is going to hold the property in the capacity of a bailee or trustee.

8. In the result, the case property Viz for returning of the property viz Open type Auto Four wheeler bearing in Registration No.TN 63 K 7164 remanded in R.P.R.No.33 /2021 is directed to be handed over to the petitioner herein as interim custody on the following conditions:

1. The petitioner shall produce the xerox copy of RC book before this court.
2. The petitioner shall produce the photograph of the property and panchanama.
3. The Petitioner/Owner has to execute bond for himself with one another surety for a sum of Rs.3,00,000/-each.
4. He shall not alienate or change the nature of the property without permission of this court.
5. He shall produce the same as and when required in court.

Dictated by me to the Steno-typist and typed by her in computer directly and corrected and pronounced by me in open court on this 12th day of January 2021

(Sd-E.Pravinkumar)
Judicial Magistrate No. V,
Madurai.

