IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.291 of 2015
(Crl.RC.SR.No.13934 of 2015)
and
M.P.No. 1 of 2015

M/s.Pointec Pens Pvt. Ltd.,
No.26/A, Attibele Industrial Area,
Bangalore - 562 107
rep. By its Personal Manager
Mr.Parsvamurty .. Petitioner

Vs

1. The Additional Superintendent of Police,
   Prohibition Enforcement Wing,
   Krishnagiri, Krishnagiri District.

2. The Inspector of Police,
   Prohibition Enforcement Wing,
   (PEW) Hosur,
   Krishnagiri District. .. Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code, to call for the records of the first respondent in C.No.186/ADSP/PEW/KGI/2015 dated 19.02.2015 and set aside the same.

For Petitioner : Mr.S.Kamadevan

For Respondents: Mr.P.Govindarajan
Additional Government Pleader

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O R D E R

Material on record discloses that on 25.01.2015, about 20.30 hours during the course of vehicle check up, at Zuzuvadi State Border Prohibition Check Post, vehicle viz., Maruthi Alto Car bearing Regn.No.KA-51-Z-8204, was found transporting Karnataka State liquor (1125 ml) which is prohibited, inside the State of Tamilnadu. Driver of the vehicle has been arrested, alleging possession and illegal transportation of other State liquour into the State of Tamilnadu. Vehicle and the prohibited contraband have been seized under a cover

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of mahazar. Case in Cr.No.56 of 2014 under Section 4(1) (a) r/w 4(1-A) of the Tamilnadu Prohibition Act, 1957 has been registered.

2. Material on record further discloses that owner of the vehicle has filed Crl.M.P.No.354 of 2014 on the file of learned Judicial Magistrate NO.II, Hosur for interim custody of the vehicle. The said petition has been dismissed on 17.03.2014. Subsequently, in Crl.R.C.No.426 of 2014, dated 28.04.2014, this Court has directed the vehicle to be returned to the petitioner, subject to the conditions therein.

3. Material on record discloses that subsequently, the confiscation notice in C.No.591-20/ADSP/PEW/KGI/2014 dated 30.10.2014 has been issued. The said confiscation notice has been challenged in W.P.29989 of 2014.

4. Contention of the petitioner in W.P.No.29989 of 2014, was that in the last paragraph of the impugned notice, the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District, had virtually preconceived confiscation, without giving an opportunity to the petitioner to raise his objections against the confiscation of the vehicle. Accepting the said contention, this Court, vide order dated 18.11.2014 in W.P.No.29989 of 2014, set aside the last paragraph of the notice dated 30.10.2014, prejudging the issue on the proposal to confiscate the vehicle. While doing so, this Court has remanded the matter for fresh consideration to the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District, the 1st respondent therein, and further directed the petitioner to submit his objections in writing, within a period of 15 days from the date of receipt of a copy of the said order. This Court has also directed the said authority to give an opportunity of personal hearing to the petitioner and thereafter, to consider his objections and pass a reasoned order on merits and in accordance with law.

5. Material on record further discloses that pursuant to the directions issued, the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District, officer authorised under Section 14 of Tamilnadu Prohibition Act, 1937, has issued a show cause notice in C.No.36-1/ADSP/PEW/KGI/2014 dated 19.01.2015, calling upon the petitioner to appear within 10 days from the date of receipt of the show cause notice.

6. Mr.S.Kamadevan, learned counsel for the petitioner submitted that in response to the show cause notice dated 19.01.2015, explanation has been given. Personal hearing was also conducted. Inviting the attention of this Court to proviso No.(iii) to Sub section (k)(c) of Section 4(1) of Tamilnadu Prohibition Act, 1937, Mr.Kamadevan, learned counsel for the petitioner submitted that transportation or possession of liquour for personal consumption

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within the prescribed quantity of any liquour is permissible under law. He further submitted that the quantity of liquour alleged to have been in possession and transported viz., (i) Royal Challenge Whisky 375 x 1 = 375 ML and (ii) Cabernet Savignonwine 750 x 1 = 750 ML.

7. Taking this Court through the Tamilnadu Liquor (Possession for Personal Consumption) Rules 1996, Mr.Kamadevan, learned counsel for the petitioner submitted that the quantity of liquor found in possession and transported would not attract the penal provisions of Section 4(1)(j) of the Tamilnadu Prohibition Act, 1937. He also submitted that though a Crime has been registered under Section 4(1)(a) r/w 4(1-A) of Tamilnadu Prohibition Act, 1937 charge sheet has been filed in STC No.1728 of 2014 dated 12.06.2014 on the file of the learned Judicial Magistrate No.II, Hosur, only under Section 4(1)(a) of Tamilnadu Prohibition Act.

8. At this juncture, this Court deems it fit to extract proviso (iii) to sub Section (k) (c) of Section 4 of the Tamilnadu Prohibition Act, 1937.

> "Provided that nothing contained in this sub section shall apply to the transport or possession for personal consumption of the prescribed quantity of any liquor specified by the State Government under sub-clause (i) of clause (j)."

9. It is also required to extract the Tamilnadu Liquor (Possession for Personal Consumption) Rules 1996.

> "In exercise of the powers conferred by Section 54 of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937), read with clause (iii) of the proviso to sub-section (1) of Section 4 of the said Act, the Governor of Tamil Nadu hereby makes the following rules:-
>
> RULES
>
> 1. Short title and commencement.-
> (1) These rules may be called the Tamilnadu Liquor (Possession for Personal Consumption) Rules, 1996.
> (2) These rules shall come into force with effect on and from 25th April 1996.
> 2. Possession of liquor for personal consumption.- No person shall possess the liquor mentioned in column (1) of the Table below, which have already been specified under sub-clause (j) of clause (i) of sub-section (1) of section 4 of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937), for personal consumption in excess of the quantity specified in the correspondent entries in column (2) thereof:-

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TABLE

Liquor	Quantity
(1)	(2)
(1) Indian Made Foreign Spirits	750 milli-litres.
(2) Foreign liquor	750 milli-litres.
(3) Beer	1,300 milli-litres.
(4) Wine	750 milli-litres.

10. According to the learned counsel for the petitioner, for possession and transportation of the permitted quantity of liquor, under the abovesaid Rules, there is no need to initiate any confiscation proceedings. Argument of the learned counsel cannot be considered at this juncture, for the reason that confiscation proceedings have already been initiated by the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District, vide notice dated 19.01.2015 pursuant to the directions of this Court in W.P.No.29989 of 2014 dated 18.11.2014. Any observations made in this proceedings, may influence the mind of the authority in deciding the proceedings, initiated for confiscation. Therefore, I refrain from doing so. It is a matter to be considered by the authority.

11. While the confiscation proceedings stated supra are pending, by referring to an undertaking to be given by the petitioner, for the interim custody of the vehicle and accordingly, stated in the order made in Crl.R.C.No.426 of 2014 dated 28.04.2014, the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District, vide proceedings in C.No.186/ADSP/PEW/KGI/2015 dated 19.02.2015 has directed the petitioner to produce vehicle viz., Maruthi Alto Car bearing Regn.No.KA-51-Z-8204, to his office, so as to enable the authority to produce the same, before Automobile Engineer, Government Workshop, Dharmapuri, for fixing the value of the vehicle. At this juncture, the undertaking to be given by the petitioner for return of the Car, the order made in Crl.R.C.No.426 of 2014 dated 28.04.2014, is a follows:

> "(e) the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future and to produce the vehicle as and when required by the respondent police and also the petitioner will not alter the character and features of the said vehicle, without further orders of the Court."

12. Conditions imposed in Crl.R.C.No.426 of 2014 dated 28.04.2014, while ordering interim custody of the vehicle are only to enable that the vehicle should not be used for any illegal activities. Direction to produce the vehicle as and when required by the respondent police, and also not to alter the character and features of the said vehicle without further orders from this Court, is to ensure that there should not be any alteration of the vehicle

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and that interim custody ordered to use the vehicle, should not be misused.

13. On the correctness of the impugned directions dated 19.02.2014 to produce the vehicle for the purpose of fixing the value, inviting the attention of this Court to a decision made in N.Ramesh V. State, rep. by Additional Superintendent of Police, PEW, Krishnagiri District, reported in 2015 (1) LW (Crl) 178, Mr.Kamadevan, learned counsel for the petitioner submitted that valuation of the vehicle can be done only after confiscation proceedings ends in finality. It is also his submission that by initiating the proceedings under Section 14(4) of the Tamilnadu Prohibition Act Act, 1937 for confiscation of the vehicle, the owner or the person from whom the vehicle is seized, shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of the vehicle.

14. Stage to exercise the powers by the authorized officer under the Act, to permit the petitioner to exercise an option to pay in lieu of confiscation of the vehicle, has not reached and therefore, the submission advanced with reference to the said power, cannot be countenanced.

15. Perusal of the impugned notice dated 19.02.2015 makes it clear that production of vehicle viz., Maruthi Alto Car bearing Regn.No.KA-51-Z-8204, before the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District was sought for, to fix the value of the said vehicle and it is the submission of the learned counsel for the petitioner that in the light of the decision in N.Ramesh's case, the impugned proceedings required to be set aside.

16. Opposing the prayer sought for Mr.P.Govindarajan, learned Additional Public Prosecutor submitted that what has been transported in the vehicle viz., Maruthi Alto Car bearing Regn.No.KA-51-Z-8204, is (i) Royal Challenge Whisky 375 x 1 = 375 ML and (ii) Cabernet Savignonwine 750 x 1 = 750 ML, is liquor permitted to be sold only in Karnataka and not in Tamilnadu. When possession and transportation of the said liquour is not permitted within the territorial jurisdiction of Tamilnadu, the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District, the authorised officer under the Tamilnadu Prohibition Act, 1937 can initiate confiscation proceedings, whatever be the quantity. He also submitted that when the petitioner has already submitted his explanation, correctness of the confiscation proceedings cannot be questioned in the present revision case. He prayed for dismissal of the Criminal Revision Case.

Heard the learned counsel for the parties and perused the materials available on record.

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17. Though several contentions have been made, this Court is not inclined to advert to all except to consider as to whether the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District, is right in directing the petitioner to surrender the vehicle for the purpose of fixing the market value. The said issue is no longer res integra in view of the decision in N.Ramesh's case, where this Court after considering the statutory provision under Section 14(4) of the Tamilnadu Prohibition Act, ordered as follows:

> "9. Referring to an undertaking said to have been given by the petitioner for production of the vehicle and in default to pay fine, the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri District has directed the petitioner to surrender the vehicle for confiscation. Section 14 of the Tamilnadu Prohibition Act, deals with how confiscation has to be ordered. Sub-sections 1 and 2 of Section 14 of the Act, deals with the power of the Court and they are reproduced.
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> 14. Confiscation how ordered: [1] When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the Court decides that anything is liable to confiscation such confiscation shall be ordered by the Court.
> [2] Where during the trial of a case for an offence against this Act, the Court decides that anything is liable to confiscation, the Court shall order the confiscation:
>
> Provided that no animal, vessel, cart or other vehicle shall be confiscated under sub-section [1] or sub-section [2] if that Court after hearing the owner of such animal, vessel, cart or other vehicle and any person claiming any right thereto, is satisfied that the owner and such person had exercised due
> care in the prevention of the commission of such an offence;

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10. In the case on hand, the accused are known. Hence, sub section 3 of Section 14 is not attracted. FIR has been registered. Section 14(4) of the Act is independent of sub Section 3 of Act and it reads as follows:

> Not withstanding anything contained in sub-sections [1] to [3], if the Collector or other Prohibition Officer in charge of the district or any other officer

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authorised by the State Government in that behalf, is satisfied that an offence has been committed against his Act and whether or not a prosecution is instituted for such offence. He may without prejudice to any order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence;

11. As per the provision, before passing an order of confiscation, the owner or the person from whom the vehicle is seized shall be given :
i.a notice in writing informing him of the ground son which it is proposed to confiscate the animal, vessel, car or other vehicle.

ii.An opportunity of making a representation in writing within a reasonable time not exceeding fourteen days as may be specified in the notice against the grounds of confiscation; and

iii.a reasonable opportunity of being heard in the matter;

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such anumal, vessel, cart or other vehicle.

12. In the case on hand, presuming that the vehicle is liable for confiscation and for the said purpose, valuation has to be done, the Additional Superintendent of Prohibition Enforcement Wing Krishnagiri District has directed the petitioner produce the vehicle on 10.11.2014 at 10.00 AM, in the office of the Prohibition Enforcement Wing, Krishnagiri District, failing which, proceedings for confiscation would be taken.

13. Impugned proceeding does not disclose that the procedure prescribed for confiscation is followed. Direction to produce the vehicle should be an act, consequent to an order passed under sub section (4) of Section 14 of the Act i.e. An order for surrendering the vehicle should follow an order of confiscation. Predetermination to confiscate the vehicle, without giving an opportunity to the petitioner is per se apparent. Valuation is sought to be made for the said purpose. Having regard to the procedure contemplated, this Court is inclined to set aside the impugned proceedings. Notwithstanding the powers of the Court, if the Prohibition officer in charge of the district is

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inclined to confiscate the vehicle in exercising his powers under Section 14(4) of the Tamilnadu Prohibition Act, 1937, liberty is given, subject to the compliance of the procedure."

18. Reverting to the case on hand, in the impugned proceedings dated 19.02.2015, by referring to the undertaking given by the petitioner the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District has directed the petitioner to produce the vehicle so as to enable production of the same before the Automobile Engineer, Government Workshop, Dharmapuri, for fixing the value. If there is any violation of the said condition, it is always open to the authority to take appropriate action. Taking advantage of the condition imposed, direction to produce the vehicle, for fixing the valuation cannot be done. Needless to state that valuation is done only when the authority takes a decision to confiscate the vehicle and not for violation of any condition.

19. As per the decision in N.Ramesh's case, fixing the value of the vehicle can be done only after the confiscation proceedings. At paragraph No.13 of the said judgment, this Court held that directions to produce the vehicle should be an act consequent to an order passed under sub Section 4 to Section 14 of the Act i.e., an order for surrendering the vehicle should follow an order of confiscation.

20. In the light of what is stated above, the direction of the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District, to produce the vehicle for fixing the value of the vehicle, is set aside. As confiscation proceedings have already been initiated by issuance of a Show Cause Notice dated 19.01.2015 and in response to the same, the petitioner has also submitted his explanation followed by a personal enquiry, the Additional Superintendent of Police, Prohibition Enforcement Wing, Krishnagiri, Krishnagiri District the authorised person under the Tamilnadu Prohibition Act, 1937, has to pass orders, as directed by this Court in W.P.No.29989 of 2014, as expeditiously as possible, taking note of the time limit, already fixed.

21. With the above directions, the Criminal Revision Case is Allowed.

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s/d-
Assistant Registrar(V)

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Sub-Assistant Registrar

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To

1. The Additional Superintendent of Police,
   Prohibition Enforcement Wing,
   Krishnagiri, Krishnagiri District.

2. The Inspector of Police,
   Prohibition Enforcement Wing,
   (PEW) Hosur,
   Krishnagiri District.

3. The Public Prosecutor,
   High Court, Madras.

+ 1 cc to Mr.S.Kamadevan, Advocate SR 18924

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