

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-10-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1038 of 2015
and M.P.Nos. 1 and 2 of 2015

P.G.Ravi

.. Petitioner /Appellant

Vs.

1.The Addl.Deputy Superintendent of Police
Prohibition Enforcement Wing
Krishnagiri
Krishnagiri District.

2.The Inspector of Police
Prohibition Enforcement Wing
Hosur
Krishnagiri District.

.. Respondents

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the judgment dated 06.07.2015 made in CrI.A.No.6 of 2015 on the file of the Principal Sessions Judge, Krishnagiri, confirming the proceedings of the 1st respondent in Na.Ka.No.709-7 A.D.S.P./Prohibition Enforcement Wing, Krishnagiri, dated 24.12.2014, by allowing the present Criminal Revision Case.

For Petitioner

:Mr.M.Guruprasad
for Mr.R.Jayaprakash

For Respondents

:Mr.V.Arul
Government Advocate
(Criminal Side)

ORDER

This Criminal Revision Case is filed by the petitioner, who is the owner of the Maruthi Suzuki Swift Car bearing Regn.No.KA-51-MD-7554, aggrieved against the judgment in Crl.A.No.6 of 2015 passed by the Principal Sessions Judge, Krishnagiri, dated 06.07.2015, confirming the order of confiscation of vehicle made by the proceedings of the 1st respondent in Na.Ka.No.709-7 A.D.S.P./Prohibition Enforcement Wing, Krishnagiri, dated 24.12.2014.

2. Mr.M.Guruprasad, learned counsel for the petitioner would submit that the petitioner is the owner of the vehicle and he is in no way connected with the offence and that he is not at all arrayed as an accused and his vehicle was seized on 02.08.2014 alleging that the vehicle was used for transporting two bottles of Manson House Brandy each weighing 750 ml from Karnataka. He would further contend that actually, the petitioner's landlord took the vehicle for attending a marriage function at Karnataka and thereafter, the vehicle has been seized only because of the alleged carrying of two bottles of liquor. The main ground of attack made by the learned counsel appearing for the petitioner is that a show cause notice was issued by the first respondent to the petitioner on 30.09.2014. The said show cause notice was not at all served on him. He would further submit that according to the petitioner, he himself has collected the show cause notice on 21.10.2014. Later on, it was sent by Registered Post and he received the show cause notice on 24.10.2014 and on receipt of the show cause notice, on 27.10.2014, he prepared the reply and he sent the same on 30.10.2014 and it was received by the Department on 31.10.2014, for which, the acknowledgments were available and the same were produced before the Court, but, neither in the preliminary order nor in the final order or in the appeal, the reply has been considered. In fact, both Courts below have categorically stated that no reply has been received for the show cause notice, which is patently wrong. Though the reply was available, without considering the same, the orders have been passed, which is an error apparent on the face of the record, therefore, the proper justice has not been done to the petitioner. He would further contend that when there is an error apparent on the face of the record, the petitioner is entitled for the benefit, especially, the due process of law has not been followed only on this technical ground, he seeks to set aside the judgment passed by the Appellate Court. He would also state

that the petitioner is in no way responsible for the offence, because, he is not at all arrayed as an accused, in fact, he is the owner of the vehicle and he is prepared to abide by any of the conditions imposed by this Court. Earlier, this Court in CrI.R.C.No.826 of 2014, by order dated 12.09.2014 directed the release of vehicle to him. He would further add that the petitioner is willing to produce the vehicle at any time as directed by this Court, he is also willing to abide by any condition to be imposed by this Court and therefore, he seeks an opportunity to put forward his case.

3. Mr.V.Arul, the learned Government Advocate (Criminal Side) would contend as against the confiscation proceeding only an appeal would lie and the petitioner has exhausted such remedy by way of filing an appeal. The appeal was considered in detail by the Appellate Authority and he has ultimately held that the reply has been given by the petitioner belatedly, therefore, he would contend that the order has been passed in accordance with law.

4. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal at the stage of admission itself.

5. I have carefully perused the entire materials available on record and the judgments passed by both Courts below and I have also perused the chronological dates of events. It is seen that the show cause notice was issued by the first respondent to the petitioner on 30.09.2014. According to the petitioner, it was served on him by Registered Post on 24.10.2014 and on receipt of the show cause notice, on 27.10.2014, he prepared the reply and he sent the same on 30.10.2014 and it was received by the Department on 31.10.2014, for which, the acknowledgments were available and the same were produced before the Court, but, neither in the preliminary order nor in the final order or in the appeal, the reply has been considered. Admittedly, on the date when the order of confiscation of the vehicle was passed by the first respondent on 24.12.2004, the reply given by the petitioner was very much available on the file, but, the same has not been considered. The Appellate Authority also did not take this vital point into consideration. Once, the reply was available on the file, the Appellate Authority before passing the order should have considered the same and thereafter, pass orders. Without taking into consideration the reply given for the show cause notice, the confiscation order has been passed. This clearly affects the legal right of the petitioner.

Therefore, on the sole ground of denial of opportunity to the petitioner, the impugned judgment dated 06.07.2015 is set aside. This Criminal Revision Case is allowed. It is suffice to state that the matter is remanded back to the first respondent, who in turn shall consider the matter including the reply given for the show cause notice dated 27.10.2014 and after affording an opportunity to the petitioner shall pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CO)

True Copy

Sub Assistant Registrar

To

- 1.The Addl.Deputy Superintendent of Police
Prohibition Enforcement Wing
Krishnagiri
Krishnagiri District.
- 2.The Inspector of Police
Prohibition Enforcement Wing
Hosur
Krishnagiri District.
- 3.The Principal Sessions Judge
Krishnagiri.

+1cc to Mr.R.Jayaprakash, Advocate Sr.59105

Cr1.R.C. No. 1038 of 2015

nr[co]
srg 20/11/2015

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