

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **14.05.2015**

CORAM:

THE HONOURABLE MR. JUSTICE **R.SUBBIAH**

Writ Petition No.**14529** of 2015
& M.P.Nos.1 and 2 of 2015

1 Thamaraiselvan .. Petitioner

Vs.

1 The Additional Superintendent of Police
Prohibition Enforcement Wing
Thiruvarur District.

2 The Inspector of Police
Thiruvarur Prohibition Enforcement Wing
Thiruvarur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent vide Na.Ka.24/ADSP/ PEW/2015 dated 26.2.2015 and quash the same consequently direct the second respondent herein to return the vehicle bearing Registration No.TN/ 68/E/5901 to the petitioner.

For Petitioner : Mr.T.Muruganantham
For Respondents : Mr.A.Kumar, Spl.Govt.Pleader

ORDER

This Writ Petition has been filed for a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent dated 26.2.2015 and quash the same and

consequently direct the second respondent to return the vehicle bearing Registration No.TN/ 68/E/5901 to the petitioner.

2. It is the case of the petitioner that he is an agriculturist by profession and for his agricultural purpose, he has purchased a two wheeler by name Hero Honda Splendour bearing Registration No.TN/68/E/5901. Ever since from the date of purchase of the vehicle, the petitioner has been using the vehicle only for legal purposes. While so, for the wedding of his son, the petitioner's son has taken the vehicle for distribution of invitation to the friends and relatives. On 20.2.2015, the second respondent asked the petitioner's son to stop the vehicle in the check post. The petitioner's son stopped the vehicle just few feet away from the check post. On getting provoked by the conduct of the petitioner's son, the second respondent became angry and inimical towards his son. The second respondent asked his son to leave the vehicle in the check post and asked his son to meet them in the police station. When the petitioner's son enquired with the second respondent the purpose for which the vehicle had been detained by the second respondent, the second respondent did not say anything about the detention of the vehicle. The petitioner's son came to know that the second respondent registered a false case

against him in Crime No.294/2015 for the offence under section 4(1)(a) of TNP & Transport Act on their file and seized the vehicle. Thereafter, the first respondent has issued a Show Cause Notice dated 26.2.2015 requiring the petitioner to give reply to the show cause notice and granted 14 days time to give reply. Before completion of 14 days time, the first respondent has passed the impugned order on the very same day on which the show cause notice was issued, namely on 26.2.2015, directing the petitioner to receive the vehicle on depositing the present value of the vehicle, i.e., Rs.22,000/- with Sales Tax of 14.5% to the credit of Government Treasury Account, failing which the vehicle will be kept under the custody of the Government. Therefore, the petitioner has come forward with the present Writ Petition with the aforesaid prayer.

3. The learned Special Government Pleader appearing for the respondents submitted that the petitioner's son was transporting 15 liquor bottles, each containing 750 ml., without any permission. Therefore, the vehicle was seized. Moreover, the petitioner has already filed a Petition in CrI.M.P.No.1341/2015 before the learned Judicial Magistrate, Tiruvarur for return of the vehicle under sections 457 and 541 of Cr.P.C. Hence, he sought for dismissal of the Writ Petition.

4. The learned counsel for the petitioner submitted that since the vehicle was detained, the learned Magistrate has no power to pass an order in the application and the learned Judicial Magistrate has already dismissed the Cr.M.P.No.1341 of 2015 on 11.3.2015. Thus, he sought for return of the vehicle.

5. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

6. Without going into the merits and demerits of the factual aspects of the case, I find that in the instant case, show cause notice was issued by the first respondent on 26.2.2015 granting 14 days time to the petitioner to give explanation. Even before sending a reply by the petitioner, on the very same day, the first respondent has passed the impugned order. Therefore, I am of the opinion that the impugned order is liable to be quashed. Accordingly, the impugned order passed by the first respondent dated 26.2.2015 is quashed.

7. The second respondent is directed to return the vehicle bearing Registration No.TN/68/E/5901 to the petitioner on fulfilling the following conditions:-

"(i) The petitioner shall deposit a sum of Rs.10,000/- (Rupees ten thousand only) in cash before the first respondent.

(ii) The petitioner shall produce the documents relating to the ownership of the vehicle.

(iii) The petitioner shall file an undertaking that he will produce the vehicle in question before the respondents as and when called for and that he will not alienate the vehicle in question till the proceedings initiated are completed.

(iv) On compliance of the above conditions, the respondents are directed to release the vehicle to the petitioners within two days.

8. The writ petition is disposed of subject to the above conditions. No costs. Consequently, connected miscellaneous petitions are closed.

14.05.2015

ajr

(Note: Issue the order copy on 19.5.2015)

R.SUBBIAH, J.

ajr

To

- 1 The Additional Superintendent of Police
Prohibition Enforcement Wing
Thiruvarur District.
- 2 The Inspector of Police
Thiruvarur Prohibition Enforcement Wing
Thiruvarur District.

W.P.No.14529 of 2015

14.05.2015