

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.06.2015

DELIVERED ON : 10.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.24755 of 2014 and M.P.No.1 of 2014

A.Kadar Meeran

..Petitioner

Vs

1.State rep by
Additional Deputy Commissioner of Police
Prohibition Enforcement Wing- West Zone
St.Thomas Mount Division
Chennai 600 016

2.The Inspector of Police
Prohibition Enforcement Wing
Poonamallee
Chennai 600 069
Cr.No.533/2011.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records relating to the judgment passed in C.A.No.7/2013 dated 20.06.2014 on the file of the learned Sessions Judge II, Kanchipuram, confirming the Confiscation Order passed in Na.Ka.40 ADCP, PEW, West Zone, Chennai dated 15.02.2013 by the first respondent viz., Additional Deputy Commissioner of Police, PEW, West Zone, St.Thomas Mount, Chennai 600 016.

For Petitioner : Mr.T.R.Sivaram

For Respondents : Mr.P.Sanjay Gandhi, AGP

ORDER

The petitioner herein is seeking to set aside the order dated 20.06.2014 passed in C.A.No.7/2013 by the Sessions Court No.II, Kancheepuram, by which the confiscation order passed by the first respondent is confirmed.

2. The facts of the case are as follows:

It is the case of the police that on 28.12.2011, officials of the Prohibition Enforcement Wing intercepted a Scorpio Car TN-01-AK-0033 near a check post and when they searched the car, it was found to carry huge quantities of illicit arrack. The car was driven by one Sulaiman @ Bajpai and he was arrested. A case in Poonamallee PEW Cr.No.533 of 2011 under Section 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act (Transport) read with 6 and 11 of RS

Rules, 1959 was registered against said Sulaiman @ Bajpai. The Scorpio car was taken custody and it was subjected to confiscation proceedings under the provisions of the Tamil Nadu Prohibition Act. According to the respondent police, they made enquiries with the Transport Department and found that the registered owner of the car was one Goolabijith residing at No.50 River Highs, No.3/5, Valluvar Kottam High Road, Nungambakkam, Chennai. For initiating confiscation proceedings, the police attempted to serve notice on Goolabijith. However, since he was not available in the said address, the police were not able to serve on him the notice. While so, the petitioner herein filed an application in CMP No.10342/2012 before the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur under Section 451 Cr.P.C. for return of the car contending that, he is the lawful owner of the car. The petitioner also produced a copy of the RC Book which showed that the car was transferred from the name of Goolabijith to the name of the petitioner as early as on 02.02.2011 itself and that the incident had taken place only subsequently on 28.12.2011. The learned District Munsif-cum-Judicial Magistrate dismissed the application on 22.01.2013 on the ground that, since the confiscation orders were passed on 15.02.2013, the Court will not have jurisdiction. Based on the admission of the petitioner that the car belongs to him, this petitioner was also added as an accused by the police in Cr.No.533 of 2011 and Final Report in PRC No.51 of 2012 was filed against Sulaiman @ Bajpai [A1] and this petitioner. The case was committed to the Court of Sessions where it was taken on file as S.C.No.68/2014. The first respondent passed the Confiscation Order on 15.02.2013 confiscating the car to the State.

3 The learned counsel for the petitioner submitted that the Confiscation Order dated 15.02.2013 and the order of the Appellate Judge, dated 20.06.2014, deserve to be set aside on the very short ground that no proper notice was served on the petitioner.

4 The second respondent police has filed a counter affidavit refuting the contention of the petitioner.

5 This Court carefully perused the records and found that the first respondent, even before passing the Confiscation Order on 15.02.2013, was aware of the fact that, this petitioner has approached the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur in C.M.P.No.10342 of 2012 praying for interim custody of the car under Section 451 Cr.P.C. on the ground that he is the lawful owner. Further, the first respondent also knew that the petitioner was residing in Old No.2, New No.7, Venkateshwara Street, Chennai which address this petitioner has given in his petition in CMP No.10342 of 2012 filed before the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur. The fact that the first respondent is aware, is evident from the following statement in the confiscation order dated 15.02.2013 itself, passed by himself:

தற்போதைய விலாசம் பழைய எண்.2, புதிய எண்.7, வெங்கடேஸ்வரா தெருஇ
பரங்கிமலை, சென்னை என்பதை நீதிமன்றத்தில் தெரிவித்துள்ளீர்."

6 But, the first respondent stated that his Officials attempted to serve notice on the petitioner in D.No.16/2, Church Road, Jameen Pallavaram, Chrompet, which is the address that has been given in the R.C. Book in respect of the car. Though the R.C. Book may contain the aforesaid address, yet, it is evident from the Confiscation Order that the first respondent knew that the petitioner was not residing in the address found in R.C.Book, but, in Old No.2, New No.7, Venkateswara Street, Chrompet (St.Thomas Mount Division), Chennai. Therefore, the first respondent should have served notice on the petitioner to the said address, which he did not do. Therefore, the Confiscation Order and the further order by the Appellate Judge in Crl.A.No.7 of 2013 deserve to be set aside and accordingly, they are set aside.

7 The matter is now remanded to the first respondent for issuing fresh notice to the petitioner and for passing appropriate orders after hearing him. In this Writ Petition, the petitioner has given his address as Old No.2, New No.7, Venkateswara Street, Chrompet (St.Thomas Mount Division), Chennai-44 and the first respondent shall send notice to this address for hearing the petitioner.

8 In the result, the writ petition is partly allowed and the impugned orders are set aside and the matter is remanded to the first respondent for fresh disposal in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Deputy Commissioner of Police
Prohibition Enforcement Wing- West Zone
St.Thomas Mount Division, Chennai 600 016

2.The Inspector of Police
Prohibition Enforcement Wing
Poonamallee, Chennai 600 069

+1cc to Mr.T.R. Sivaram, Advocate, S.R.No.28289

SCD(CO)
EU(30/06/2015)