



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.01.2015
CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

Crl.R.C.(MD).No.534 of 2014

and

M.P.(MD)No.1 of 2014

V.Rajan .. Revision petitioner/Appellant/Accused
Vs.

1.The State represented by,
The Additional Superintendent of Police,
Prohibition and Enforcement Wing,
Tiruchirappalli District.

2.The Inspector of Police,
Samayapuram Police Station,
Tiruchirappalli District.

(Crime No.148 of 2014) .. Respondents/Respondents/Complainant

Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C. against the order passed by the Learned Principal Sessions Judge, Trichy in C.A.No.137/2014 dated 06/11/2014 confirming by the order passed by the 1st Respondent vide his proceedings in Na.ka.No.13/Confiscn/PEW/TRI/14, dated 30/06/2014 under section 14(1) of the Tamil Nadu Prohibition Act by ordering confiscation of the petitioner vehicle namely Maruti Swift Dzire bearing its registration No.TN 75 C 0009.

For Petitioner : Mr.R.Anand

For Respondents : Mr.P.Kandasamy
Government Advocate (crl.side)

ORDER

By consent the revision petition itself is taken up for final disposal.

2. The petitioner is the owner of Maruti Swift Dzire bearing registration No.TN 75 C 0009 and according to him, the vehicle was driven by one Felix, S/o.Mohandoss, Mathikodu, Thikkanamkodu, Kanniyakumari District, on 24.05.2014 from Chennai to Trichy and when it was nearing SRM Hospital at Irungalur, Trichy District, he dashed against one yasmin Banu, who died on the spot and caused injuries of rider as well as pillion riders of the motor cycle bearing registration No.TN 48 U 8143 and also dashed against one Senchi and caused him injuries.

3. Based on the complaint given by the brother of the deceased yasmin Banu, the second respondent herein has registered a case in Crime No.148 of 2014 on 24.05.2014 for the alleged commission of offences under Sections 279, 337, 304(A) IPC and 4(1)(a) of Tamil Nadu Prohibition Act.



4. The petitioner has also moved an application seeking interim custody in Crl.M.P.No.3338 of 2014 on the file of the Court of Judicial Magistrate No.II, Trichirappalli and vide order dated 06.06.2014, the said Court directed the second respondent to produce the vehicle before the Court on or before 12.06.2014. The second respondent challenging the legality of the order filed Crl.R.C.21 of 2014 before the Principal Sessions Court, Trichirappalli and the said order was set aside on 02.08.2014 stating among other things that the petitioner has not properly disclosed the fact. Further, that the confiscation proceedings have already been initiated by the designated authority and that challenge is made to the said order in this Criminal Revision Case.

5. The petitioner was issued with show cause notice as to why the confiscation of the car should be done by the first respondent, on 13.06.2014 and in response to the same, the petitioner, who claims to be the owner of the vehicle, filed his response dated 24.06.2014 stating among other things that he did not drive the vehicle on the date on which it met with the accident and as far as the allegations that it was found carrying liquor bottles, it is contended by the petitioner that it is nothing but false. It is further contended by the revision petitioner that the car is having registration certificate and valid insurance also and the person who was driving the car is also having a driving license and on account of his business activities he is in urgent need of the car and therefore he prayed for dropping the confiscation proceedings and return of the car.

6. The first respondent on taking into consideration of the reply submitted by the petitioner herein has passed the impugned order on 30.06.2014 ordering the confiscation of the said car and also gave an option to the petitioner that if he wants to return of the car, he should pay the value of the car as fixed by the expert. In addition to that, he should pay the other charges/taxes also. The petitioner feeling aggrieved by the said order of confiscation, has filed this revision.

7. Mr.R.Anand, learned counsel for the revision petitioner would vehemently contend that admittedly the petitioner being the owner of the car did not drive the vehicle at the relevant point of time and the allegation that liquor bottles have been transported are nothing but false and it has been done on account of previous enmity and would further add that though the petitioner has submitted his detail response, the first respondent, while passing the impugned order has not even taken care to consider the same and pass a routine and cryptic order ordering confiscation and invited the attention of this Court to Section 14(4) proviso (iii) of the Tamil Nadu Prohibition Act, 1937 and would contend that the said provision also contemplates a reasonable opportunity of being heard and without giving an opportunity of personal hearing the first respondent has chosen to pass the impugned order and hence, he prayed for interference.

8. Per contra, the learned Government Advocate (crl. side) would submit that the vehicle was driven in a rash and negligent manner which caused to death of a lady and injured three other persons and after following proper procedure only, the impugned order of confiscation came to be passed and prays for dismissal of this revision.



9. This Court has carefully considered the rival submissions made by both sides and also perused the materials available on record.

10. Section 14 of the Tamil Nadu Prohibition Act speaks about the confiscation proceedings. As per Section 14(4) proviso (iii), before ordering confiscation, a reasonable opportunity should be given.

11. A perusal of the impugned order would disclose that the first respondent has merely stated that the reply to the show cause notice is not satisfactory and cannot be accepted.

12. In the considered opinion of this Court, the said reason assigned by the first respondent while ordering confiscation, is not in tune with the above said statutory provision and hence, on the sole ground, the impugned order of confiscation is liable to be interfered with and it has to be remanded to the first respondent for fresh adjudication in accordance with law.

13. In the result, the Criminal Revision Case is allowed and the impugned order of confiscation dated 30.06.2014 passed by the first respondent is set aside and the matter is once again remanded to the first respondent, who shall give an opportunity of personal hearing to the petitioner in terms of the above said statutory provisions and pass orders on merits and in accordance with law as expeditiously as possible and not later than three weeks from the date of receipt of a copy of this order. It is needless to say that the vehicle which is under confiscation shall be kept in proper and safe place, so that its material value and usage shall not get diminished. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Principal Sessions Judge,Tiruchirappalli.

2.The Additional Superintendent of Police,
Prohibition and Enforcement Wing,
Tiruchirappalli District.

3.The Inspector of Police,
Samayapuram Police Station,
Tiruchirappalli District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Anand,Advocate, SR.No.4243

Cr1.R.C. (MD)No.534 of 2014

29.01.2015