

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL OP.No.20847 of 2016

M. Velu

... Petitioner

Vs

1.The Additional Superintenant of Police, (T.Rajarajan)
Prohibition Enforcement Wing,
Villupuram dist.

2. The Station House Officer,
Prohibition Enforcement Wing,
Tindivanam Police Station,
Tindivanam ...Respondents.

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the Respondents to produce the petitioner's vehicle bearing Registration No.TN 19 R 8440 (Mahindra Xylo) before the Judicial Magistrate-II, Thindivanam pending investigation in Crime No.77 of 2016 on the file of the 2nd Respondent Police.

For Petitioner : Mr.E.J.Ayyappan

For Respondents : Mr.C.Emalias,
Addl. Public Prosecutor

ORDER

This Petition has been filed to direct the Respondents to produce the petitioner's vehicle bearing Registration No.TN 19 R 8440 (Mahindra Xylo) before the Judicial Magistrate-II, Thindivanam pending investigation in Crime No.77 of 2016 on the file of the 2nd Respondent Police.

2. The facts of the case is as follows:

The respondent police registered a case in Crime No.77 of 2016 on 14.02.2016 under Section 4(1)(aa) of the Tamil Nadu Prohibition Act and seized a Van bearing registration No.TN 19 R

8440, which was said to be transporting liquor bottles unauthorisedly. In the FIR itself, the police have clearly stated that the vehicle has been seized and that it is going to be subjected to confiscation proceedings under Section 14(4) of the Tamil Nadu Prohibition Act and therefore, it is not being produced before the Jurisdictional Magistrate. While so, the petitioner filed C.M.P.No.630 of 2016 under Section 451 Cr.PC. before the learned Judicial Magistrate-II, Tindivanam for a direction to the respondent police to produce the Van before the Court and for a further direction to return the Van to him. The learned Judicial Magistrate-II, Tindivanam by order dated 26.02.2016 in C.M.P.No.630 of 2016, directed the respondent police to produce the Van before the Court on 04.03.2016 for further proceedings. In the meantime, the Designated Authority under the Tamil Nadu Prohibition Act, appears to have initiated the confiscation proceedings on 25.02.2016 and has passed final orders on 28.03.2016, confiscating the Van to the State. Under such circumstances, the petitioner is before this Court for a direction to the respondent police to comply with the order dated 26.02.2016 passed by the learned Judicial Magistrate-II, Tindivanam in C.M.P.No.630 of 2016.

3. Heard Mr.E.J.Ayyappan, learned counsel appearing for the petitioner and Mr.C.Emalias, learned Addl.Public Prosecutor appearing for the respondents.

4. Mr.E.J.Ayyappan, learned counsel would submit that in order to frustrate the order passed by the learned Judicial Magistrate No.II, Tindivanam in C.M.P.No.630 of 2016, the authorities have hurriedly conducted the confiscation proceedings, even without serving the notice on the petitioner. Learned Counsel also relied upon the judgment of this Court in Sakthidevi Vs State of Tamil Nadu 2011(4) MLJ (Cr1) 634.

5. This Court gave its anxious consideration on the rival submissions. In the judgment relied upon by Mr.Ayyappan, learned counsel, this Court has stated that confiscation proceedings is not a bar for the criminal Court to give interim custody of a property under Section 451 Cr.PC. This Court has no quarrel with the proposition laid down therein. In fact, a Division Bench of this Court in 2005 [1] LW [Cr1.] 93 has gone into all these aspects and has given certain guidelines in this regard. In this case, the Magistrate has been informed by the Investigating Officer, via the FIR itself that confiscation proceedings will be initiated for confiscating the vehicle and therefore, he has not producing the vehicle before the Magistrate. While so, the Magistrate has passed the order dated 26.02.2016 presumably under Section 457 Cr.P.C. for a direction

to the respondent police to produce the vehicle before him on 04.03.2016, which in the considered opinion of this Court, is beyond his jurisdiction.

Section 457[1] Cr.P.C. reads as follows :

"457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property."

This is a power given to the Magistrate to compel the police to produce certain properties, which though seized has not been produce before the Court for specious reasons. As stated above in this case, the Investigating Officer has intimated to the Magistrate clearly that the State is intending to initiate confiscation proceedings and in that context, the learned Magistrate has not ought to have pass the orders dated 26.02.2016, interim custody of a vehicle can also be obtained pending confiscation proceedings by either moving the officer or filing a writ petition under Article 226 of Constitution of India. This having not been done, the plea of the petitioner that the respondent police should have to comply with the order dated 26.02.2016, especially in the light of the fact that the confiscation proceedings had already been initiated cannot be countenanced. If there is any infirmity in the confiscation order, the same can be agitated before the Sessions Court, which is appellate authority under Tamil Nadu Prohibition Act.

In the result, the petition is devoid of merits and stands dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

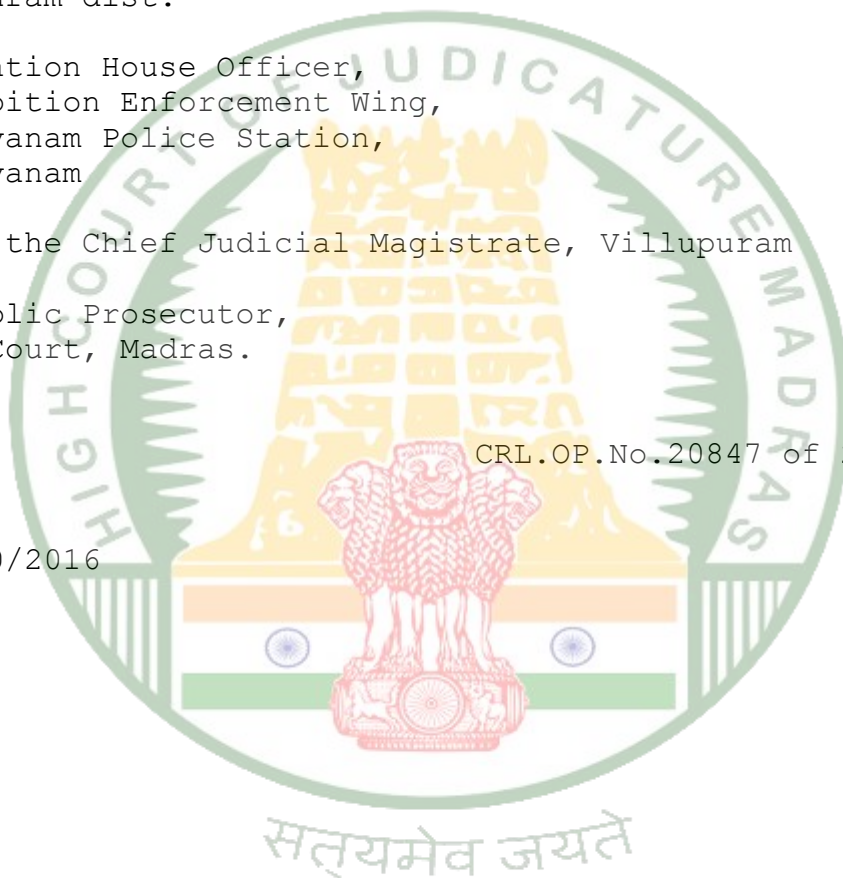
Kp/gya

To

1. The Inspector of Police,
Walajabad Police Station,
Kanchipuram District.
2. The Additional Superintendent of Police, (t.Rajarajan)
Prohibition Enforcement Wing,
Villupuram dist.
3. The Station House Officer,
Prohibition Enforcement Wing,
Tindivanam Police Station,
Tindivanam
- 4 do Thro the Chief Judicial Magistrate, Villupuram
5. The Public Prosecutor,
High Court, Madras.

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CNR (CO)
MD : 21/10/2016



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