

IN THE H IGH COURT OF JUDICATURE AT MADRAS
DATED: 20.09.2016
CORAM
THE HONOURABLE Mr. JUSTICE P.N.PRAKASH
WP No.31172 of 2016

Mr.K.Vijayakumar

... Petitioner

Vs.

1. The Additional Superintendent of Police
Prohibition Wing
Coimbatore District.

2. The Inspector of Police
Karamadai Police Station
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to direct the 1st and 2nd respondents to pass suitable order on the representation dated 25.02.2016 with direction to refund the amount a sum of Rs.3,43,500/- paid by me as per confiscation order C.No.38/ADSP/PEW/CBE/2014 dated 19.04.2014 under Section 14(4) of TNP Act.

For Petitioner : Mr.M.Anandaraj
For Respondents : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This writ petition is filed to direct the 1st and 2nd respondents to pass suitable orders on the representation dated 25.02.2016 with a direction to refund the amount of Rs.3,43,500/- paid by the petitioner as per confiscation order C.No.38/ADSP/PEW/CBE/2014 dated 19.04.2014 under Section 14(4) of the Tamil Nadu Prohibition Act.

2. The facts of the case make a very interesting reading.

2.1. One Panneerselvam, who was travelling in Bolero Jeep, bearing registration No.TN 23 AK 3244, was intercepted by election authorities on 15.03.2014, on suspicion and on checking the vehicle, the election authorities found that it contained huge quantities of Indian made liquor and kerosene. The election authorities handed over the vehicle and requested the 2nd respondent police to register a case in Crime No.80 of 2014 and after completing the investigation, the police filed a final report in CC No.64 of 2015 before the Judicial Magistrate Court No.4, Coimbatore against Panneerselvam for offences under the

Tamil Nadu Prohibition Act as well as the Essential Commodities Act.

2.2. While so, the petitioner, who is the owner of the said vehicle filed an application under Section 451 Cr.P.C. before the Judicial Magistrate Court No.4, Coimbatore in CrI.M.P.No.738 of 2014 in Crime No.80 of 2014 for return of the vehicle, which was disallowed by the Magistrate on the ground that the Additional Superintendent of Police has initiated confiscation proceedings under the Tamil Nadu Prohibition Act.

3. Admittedly, the Additional Superintendent of Police, Prohibition Enforcement Wing has passed the confiscation order dated 19.04.2014 confiscating the vehicle to the State. After the confiscation order was passed, the petitioner approached the Additional Superintendent of Police and came forward to pay the value of the vehicle and sought for return of the vehicle. The Additional Superintendent of Police passed an order on 23.05.2014 directing the petitioner to pay a sum of Rs.3,43,500/- and take back the vehicle. Accordingly, the petitioner paid the said sum and by an order dated 02.06.2014, the Additional Superintendent of Police returned the vehicle to the petitioner.

4. While so, in the trial against Panneerselvam, the learned Judicial Magistrate No.4, Coimbatore acquitted him in CC No.64 of 2015 on 18.11.2015 on the ground that the police had failed to prove that he was carrying Indian made Liquor and Kerosene as stated in the Charge sheet. Pursuant to the acquittal of Panneerselvam, the petitioner had made a representation dated 25.02.2015 to the authorities asking to refund the sum of Rs.3,43,500/-. Since there is no response, the petitioner is before this Court with the above prayer.

5. Learned counsel appearing for the petitioner contended that there is no service of notice on the petitioner in the confiscation proceedings, despite which he was directed to make the payment of Rs.3,43,500/- in order to get back the vehicle.

6. That apart, learned counsel appearing for the petitioner submitted that when Panneerselvam has been acquitted by the trial Court, there is no justification for the first respondent to retain the sum of Rs.3,43,500/- paid by the petitioner. In support of his contentions, he relied upon the order dated 05.06.2013 passed by this Court in WP No.1439 of 2013 etc. batch [Shrishti Digital Solution Vs The Additional Commissioner of Customs] and the order dated 12.01.2015 in Civil Writ Jurisdiction Case No. 8473 of 2014 passed by Patna High Court in [Ajit Kumar Singh Vs The State of Bihar & 2 others].

7. Per contra, learned Additional Public Prosecutor submitted that even in the confiscation order dated 19.04.2014, in paragraph 3, it is clearly stated that a show cause notice was issued to the petitioner on 03.04.2014 and he did not respond to the show cause notice and thereafter, the confiscation order was passed.

8. Learned Additional Public Prosecutor further submitted that the petitioner cannot compel the officials to dispose of his representation as prayed for, since the confiscation proceedings were closed before two years.

9. This Court gave its anxious consideration to the rival submissions.

10. Under Tamil Nadu Prohibition Act, when confiscation order is passed, an appeal remedy is provided before the District Judge of the concerned District. In this case, the petitioner has not chosen to prefer the appeal before the District Judge. Instead, he paid the amount by conceding to the order and got back the vehicle. Thereafter, it is not open to the petitioner to re-agitate the matter on the ground that in the criminal trial, the accused Pannerselvam has been acquitted. An order of adjudication is an order in rem, whereas, the judgment of Criminal Court convicting or acquitting a person is a judgment in personam. One will have no bearing on the other.

11. With regard to the order of this Court in Shrishti Digital Solution (supra) relied upon by the learned counsel appearing for the petitioner, confiscation orders were under challenge on the ground that a notice was not served on the assessee. In this case, even assuming for a moment that a notice had not been served on the petitioner before the order dated 19.04.2014 was passed, yet, the petitioner came forward to accept the order by paying a sum of Rs.3,43,500/- and got back his vehicle.

12. At that juncture, instead of acquiescing to the confiscation order, the petitioner should have filed a regular appeal before the District Court even with a condonation of delay application under Section 5 of the Limitation Act. As regards the judgment of Patna High Court in Ajit Kumar Singh (supra), the petitioner had filed a statutory appeal before the authorities and since the authorities did not dispose of the appeal, the petitioner therein came forward seeking writ of mandamus to direct the authorities to dispose of the appeal in a time bound manner. The facts in the said case are different from the facts obtaining in the case at hand. As stated above, the petitioner having acquiesced with the confiscation order

dated 19.04.2014, cannot reside, subsequently, on the ground that Panneerselvam has been acquitted by the trial Court in a collateral proceedings.

In the result, the Writ Petition is dismissed as devoid of merits. No costs.

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

mk

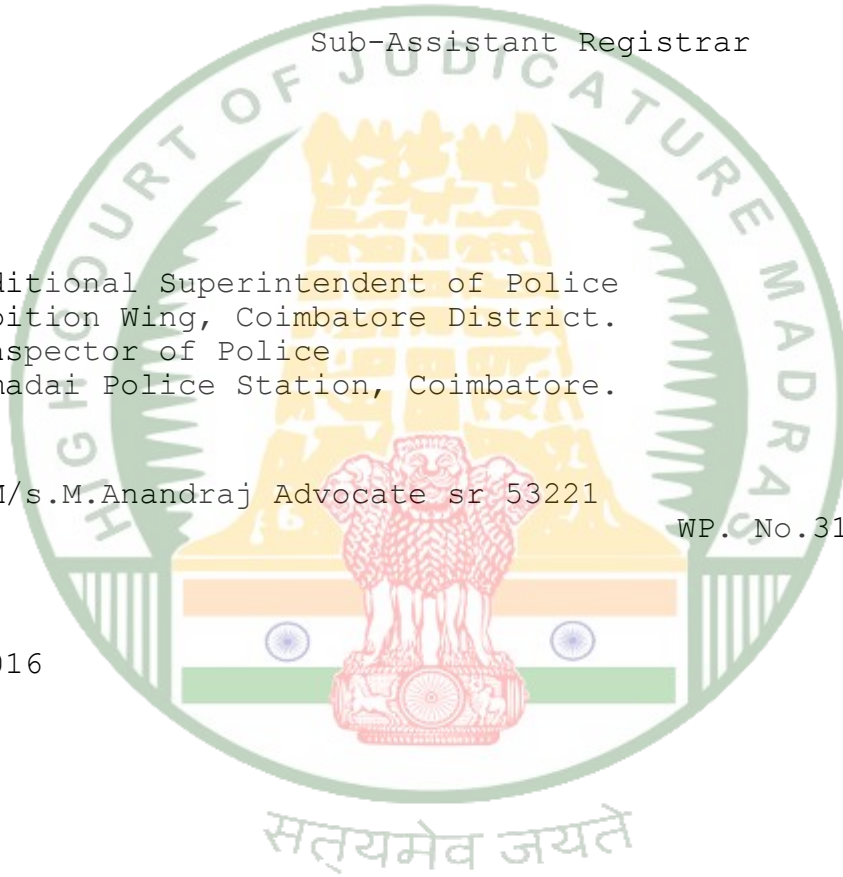
To

1. The Additional Superintendent of Police
Prohibition Wing, Coimbatore District.
2. The Inspector of Police
Karamadai Police Station, Coimbatore.

+1 cc to M/s.M.Anandraj Advocate sr 53221

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