



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.20330 of 2016

and

W.M.P (MD) No.14529 of 2016

Veerakumar

: Petitioner

Vs.

1.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
O/o.Superintendent of Police,
Thanjavur District,
Thanjavur.

2.The Inspector of Police,
Pattukkottai Taluk Police Station,
Pattukkottai,
Thanjavur District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the impugned confiscation notice issued by the first Respondent in Na.Ka.No.CON.25/Ma.Vi.A.P/Thanjavur/2016, dated 14.10.2016 and to quash the same.

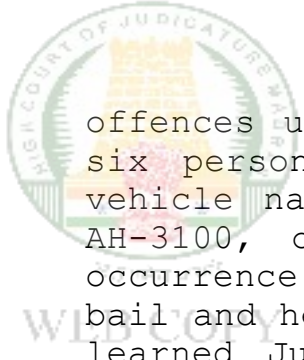
For Petitioner : Mr.S.Deenadhayalan
For Respondents : Mr.V.R.Shanmuganathan,
Special Government Pleader.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorari calling for the records of the impugned confiscation notice issued by the first respondent in Na.Ka.No.CON.25/Ma.Vi.A.P/Thanjavur/2016, dated 14.10.2016 and to quash the same.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, who took notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3.The case of the petitioner is that the petitioner rented out his premise for running a TASMAL Bar. On 18.09.2016, the second respondent registered a case in Crime No.306 of 2016 for the



offences under Sections 4(1)(aaa) and 4(1)(A) of TNP Act against six persons including the petitioner and seized the petitioner vehicle namely Toyota Innova car, bearing Registration No.TN-45-AH-3100, on the ground that it was allegedly involved in the occurrence. Subsequently, the petitioner came out on anticipatory bail and he filed an application under Section 451 CrPC before the learned Judicial Magistrate, Pattukkottai for return of vehicle and the same was allowed on 28.09.2016. Subsequently, the learned Judicial Magistrate on 30.09.2016, directed the second respondent to produce the vehicle before the Court and accordingly the same was produced and it was again handed over to the second respondent. Though, the petition filed by the petitioner for return of vehicle was allowed on 28.09.2016, the second respondent failed to hand over the vehicle to him. Again, on the petition filed by the petitioner, on 13.10.2016, the learned Judicial Magistrate, directed the second respondent to hand over the vehicle to the petitioner and the vehicle was handed over to him. Even though, the investigation is still pending, the first respondent issued confiscation notice dated 21.09.2016 and the petitioner also gave reply, refuting the averments made in the notice. However, by ignoring the same, the first respondent by the impugned proceedings dated 14.10.2016 directed him to pay Rs.1,20,000/- as market value of the vehicle within 14 days from the date of receipt of notice, failing which, the said vehicle will be confiscated. Therefore, this writ petition has been filed.

4.The learned counsel for the petitioner would submit that since the learned Judicial Magistrate, Pattukkottai has passed an order under Section 451 CrPC, the proceedings of confiscation is not maintainable.

5.The learned Additional Government Pleader would submit that as per Section 14(5) of Tamil Nadu Prohibition Act, any person aggrieved by an order of confiscation, under Section 14(4), within one month from the date of receipt of such order, appeal to the Court of Sessions, having jurisdiction. In support of his contention, he relied on the decision of this Court in W.A.No.389 of 1996, dated 25.07.1996, where under, it has been held as follows:

"8.It is contended before us that the impugned order cannot be considered to be the one passed under the sub-section (4) of Section 14 of the Act, and therefore the remedy of appeal is not available. It is also not possible to accept this contention. Firstly, the order itself in specific terms states that it is passed in exercise of the power under sub-section 14-A in the course of the order passed by the 1st respondent, it does not change the character of the order, nor does it cease to be the one passed, confiscating the vehicle in question under section 14(4) of the Act. As per sub-



section (5) of Section 14 of the Act, any person aggrieved by an order of confiscation passed under sub-section (4) may, within one month from the date of receipt of such order, appeal to the court of Sessions, having jurisdiction. Thus, the substantial remedy by way of appeal to the Sessions Court has been provided. The Sessions Court is entitled to go into the evidence and on appreciation of the evidence, it can come to the conclusion that the order of confiscation is not warranted on facts and also on law. That being so, in such a case, where a substantial remedy by way of appeal is provided, it is not at all just, appropriate and expedient to exercise the jurisdiction under Article 226 of the Constitution. We have been pointing out every now and then that jurisdiction under Article 226 is not intended to bypass the statutory remedy provided by way of appeal, which is a substantial remedy".

6. It is seen from the records that the impugned order of confiscation was passed under Section 14(4) of TNP Act. As per the dictum laid down by this Court in the Judgment stated supra, it is clear that the remedy available to the petitioner is to file an appeal before the Sessions Court, having jurisdiction, under sub Section 5 of Section 14 of TNP Act, and writ proceedings cannot be resorted to by passing the statutory remedy of appeal. In view of the same, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar.

To

1. The Additional Superintendent of Police,
Prohibition Enforcement Wing, O/o. Superintendent of Police,
Thanjavur District, Thanjavur.

2. The Inspector of Police, Pattukkottai Taluk Police Station,
Pattukkottai, Thanjavur District.

+1CC to M/S.S. Deenadhayalan, Advocate, SR.No. 63616

+1CC to the Special Government Pleader, SR.No. 64196

ORDER MADE IN
W.P(MD) No. 20330 of 2016
and

W.M.P(MD) No. 14529 of 2016
24.10.2016