

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.R.C.No.1227 of 2017  
and  
Crl.M.P.No.11770 of 2017

S.Manoharan  
S/O.Samidurai,  
rep.by its Power of Attorney his father  
J.Samidurai, No.23, Jeevanatham Street,  
Ashok Nagar,  
Lawspet, Pondicherry. .... Petitioner

Vs.

- 1.The Station House Officer,  
Inspector of Police,  
P.E.W. Adayar Wing Police Station,  
Chennai.  
(Crime No.533 of 2015)
- 2.The Additional Deputy  
Superintendent of Police,  
Prohibition Enforcement Wing (North),  
Prohibition Enforcement Wing (South) (Incharge),  
Ashok Nagar, Chennai.
- 3.L.Ashok Kumar ... Respondents

Criminal Revision filed under Section 397 read with 401 Cr.P.C. to set aside the order passed by the learned Principal District and Sessions Judge, Chengalpet, in C.A.No.2 of 2016 dated 21.07.2017 by confirming the order of confiscation passed in Na.Ka.No.200 Ku.Thu.Aha. Prohibition Enforcement Wing (South) 2015 and Na.Ka.No.201 Ku.Thu.Aha. Prohibition Enforcement Wing (South) 2015 dated 22.09.2015.

For Petitioner : Mr.G.Mohana Krishnan

For Respondents : Mr.C.Iyyapparaj  
Additional Public Prosecutor  
for R1 and R2

ORDER

This revision case has been filed against the order passed in C.A.No.2 of 2016 on the file of the learned Principal District and Sessions Judge, Chengalpet, by order dated 21.07.2017.

2.The petitioner herein claimed to be the owner of two vehicles, one is Toyota Fortuner Car, bearing Registration No.PY-01-BH-9297 and another is BMW Motor Cycle, bearing Registration No.TN-07-BV-1471. The said two vehicles have been involved for offences punishable under the provisions of Tamil Nadu Prohibition Act, 1937 (hereinafter referred to as the Act) and the same had been seized by the respondent police and thereafter, as per the procedure contemplated under the said Act, especially, under Section 14 of the Act, they had been confiscated. The said order of confiscation was passed by the 2<sup>nd</sup> respondent/ Additional Deputy Superintendent of Police, Prohibition Enforcement Wing (North), by order dated 22.09.2015. On the same day, the said vehicles had been confiscated by the 2<sup>nd</sup> respondent.

3.In the meanwhile, the petitioner, being the owner of the vehicles, had approached the trial Court for custody of the vehicles and the said petition had also been dismissed by the trial Court on the ground that the vehicles have already been confiscated.

4.Therefore, the petitioner as against the order of dismissal of the petition for interim custody has filed Crl.RC.No.1 of 2016 and as against the order of confiscation under the statute, only Appeal would lie before the District and High Court, hence filed Crl.A.No.2 of 2016 before the Appellate Court, namely, the learned Principal District and Sessions Judge, Chengalpet.

5.The Appellate Court/Principal District and Sessions Judge, by a Common Judgment dated 21.07.2017 dismissed both the revision as well as the appeal filed by the petitioner.

6.The order passed by the learned Principal District and Sessions Judge, Chengalpattu, in Crl.A.No.2 of 2016, where the order of confiscation made by the 2<sup>nd</sup> respondent was confirmed by the Appellate Court, is under challenge before this Court, in the present revision case.

7.I have heard Mr.Mohana Krishnan, learned counsel appearing for the petitioner as well as Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

8.The learned counsel appearing for the petitioner has invited the attention of this Court to the provisions of the Tamil Nadu Prohibition Act, 1937. The learned counsel appearing for the petitioner would state that as per Section 14 of the Act, confiscation proceedings ought to have been undertaken, by the authority concerned. He would further state that the 2<sup>nd</sup> respondent has not followed the procedure for confiscation, as stated under Section 14[4] of the Act. For the sake of clarity, the said provision i.e., Section 14 (4) of the Act, is extracted hereunder:

"14(4): Notwithstanding anything contained in sub-sections (1) to (3), the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given --

(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle;

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter:

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle."

9. By relying upon the said provision, the learned counsel appearing for the petitioner would state that as per Section 14(4) of the Act, it is mandatory on the part of the respondents to serve notice either to the owner or the person from whom the vehicles are seized, especially, after giving a reasonable opportunity to them, an order of confiscation has to be passed by the respondents. The learned counsel would further state that in the present case, since no notice is served either to the owner of the vehicle, who is the petitioner herein or the 3<sup>rd</sup> respondent, who is having interest over the vehicles as a financier as the hypothecation also reflects in the R.C. Book. The said mandatory requirement, as contemplated in the Act, referred to above, has not been followed. The very confiscation order itself, against which, the present revision has been filed, is bad under law and therefore, the impugned Judgment of the Court below is liable to be interfered with.

10. Per contra, the Additional Public Prosecutor appearing for the respondent/State would state that after the

occurrence, in fact, the petitioner, being the owner of the vehicle, had not been available for serving any notice, however, an attempt was made by the respondent police to serve notice directly on the petitioner, but he was not available. Therefore, by invoking Section 64 of Cr.P.C, the respondents had served notice to a male member of the family, who is residing along with the petitioner at his residence, who is none other than the cousin of the petitioner. In spite of notice had been served on him, neither the petitioner nor any person on his behalf, appeared before the Authority, at the time of confiscation proceedings and therefore, the 2<sup>nd</sup> respondent, being the statutory authority to confiscate the vehicles in question, under the provisions of the Act, has confiscated the same by the impugned order. Against the confiscation order, the petitioner had filed an appeal, where the Appellate Court also, after having considered the compliance on the part of the respondent Police in serving notice to the petitioner, and after taking note of all other aspects of the facts and circumstances of the case, was pleased to dismiss the appeal filed by the petitioner. Therefore, in this regard, the order impugned cannot be termed to be an illegal or improper order. Hence, the impugned order does not require interference from this Court.

11.I have considered the rival submissions made by both sides.

12.I have gone through the provisions, especially, Section 14(4) of the Act, which has been extracted above. It is very clear that, before passing order under Section 14(4) of the Act, notice shall be given either to the owner of the vehicle, animal, vessel or cart or any person from whom such item has been seized by the prosecution. Also, as per sub Section (4)(ii) of Section 14 of the Act, after issuance of notice, a reasonable opportunity of hearing to be given to the person to whom the notice has been served.

13.Here, in the case in hand, admittedly, notice was served to one Vigneswaran, who is none other than the cousin of the petitioner and who is residing along with the petitioner in the same residence and therefore, according to the prosecution, the said service can be construed as a valid service within the meaning of Section 14(4) of the Act.

14.Moreover, it was submitted by the learned Additional Public Prosecutor that, it is not the case of the petitioner that the respondents have not at all taken any steps to serve notice. Diligent action has been taken and on behalf of the respondents, possible efforts have been taken to serve notice to the petitioner and as he was not available to serve notice, directly on him, the prosecution, as stated above, had served notice to the adult male member of the family of the petitioner. Therefore, it cannot be said that notice as contemplated under Section 14(4) of the Act, has not been

served on the petitioner, and on the said ground, the said order impugned is vitiated. The said submissions made by the learned Additional Public Prosecutor appearing for the respondents/State though appears to be appreciable, if the mandate imposed under Section 14(4) of the Act, is taken into account, it cannot be interpreted in a way, as sought to be interpreted by the learned Additional Public Prosecutor appearing for the State, that serving of notice to the person claimed to be a family member, is the service contemplated under Section 14(4).

15. It is settled proposition of law that when the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done in a particular manner, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation where if a statute is penal in character, it must be strictly construed and followed.

16. Here, in the case in hand, it is very clear that under Section 14(4) of the Act, notice either shall be served on the petitioner i.e. the owner of the vehicles or the person from whom the vehicles were seized and it cannot be said that such notice can be served to any member of the family or other persons, who is residing in the family and along with the family of the owner or persons to whom notice should be served.

17. Moreover, it is not mere issuance of notice alone because, the proviso of Section (4)(ii) of the Act, also envisages that a reasonable opportunity shall be given to the persons, to whom such notice to be served.

18. Here, in the case in hand, no notice has been served directly on the owner of the vehicles i.e., the petitioner herein, and the chance of giving opportunity to the petitioner was also not possible and therefore, it is quite clear that neither notice has been served on the petitioner nor a reasonable opportunity being given to him. In the absence of compliance of such mandatory requirement as contemplated under the provisions, as stated above, this Court is of the view that the very impugned order of confiscation made by the 2<sup>nd</sup> respondent, is certainly vitiated and it is liable to be set aside.

19. These aspects have not been considered by the learned Appellate Judge in the appeal, while passing the impugned order. Hence, the impugned order passed by the learned Appellate Judge is also liable to be interfered with.

20.In the result, the impugned Judgment is set aside. Consequently, confiscation order passed by the 2<sup>nd</sup> respondent also is set aside.

21.Now, it is open to the petitioner to approach the trial Court by filing a fresh petition under the provisions of the Code of Criminal Procedure seeking for interim custody and if any such petition is filed before such Court, the trial Court is directed to decide the same on merits and in accordance with law.

With these directions, this Criminal Revision Case is allowed to the extent as indicated above. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mps

To

- 1.The Principal District and Sessions Judge,  
Chengalpet.
- 2.The Additional Deputy  
Superintendent of Police,  
Prohibition Enforcement Wing (North),  
Prohibition Enforcement Wing (South) (In charge),  
Ashok Nagar, Chennai.
- 3.The Station House Officer,  
Inspector of Police,  
P.E.W. Adayar Wing Police Station,  
Chennai.

+1cc to Mr.G.Mohanakrishnan, Advocate, S.R.No.69801

CrI.R.C.No.1227 of 2017  
and  
CrI.M.P.No.11770 of 2017

MR(CO)  
CA(06/11/2017)