



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2017

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.P (MD) No. 18898 of 2014

and

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

Malliga

.. Petitioner

Vs.

1. The Additional Superintendent of Police,
Prohibition Wing-1,
Tuticorin District.

2. The Inspector of Police,
Kurumbur Police Station,
Tuticorin District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records relating impugned show cause notice bearing Na.Ka.No.06A/Perimuthal/Koo.Kaa.Ka/Ma.V/Toodi/14 dated 08.11.2014 and quash the same.

For Petitioner : Mr. Chandra Bose

For Respondents : Mr. G. Muthukannan

Government Advocate

ORDER

This writ petition has been filed praying for a Writ of Certiorari to call for the records relating impugned show cause notice bearing Na.Ka.No.06A/ Perimuthal/ Koo.Kaa.Ka/ Ma.V/ Toodi/14 dated 18.11.2014 and quash the same.

2. The case of the petitioner is that the petitioner is the owner of the vehicle, namely, omni-bus bearing registration No.PY 01 CC 3366. The second respondent herein had registered a case in Crime No.239/2014 for alleged offences punishable under Sections 4(1)(aa), 4(1-A) and 14A of the Tamil Nadu Prohibition Act, 1937 (in short 'the Act') and seized the vehicle of the petitioner. The averments in the First Information Report are that a large quantity of liquor was transported from Puduchery to Kanyakumari in a Tata Magic Van that when the said vehicle was intercepted by the respondent police and the contraband found therein was seized, the driver of the vehicle made a confession



revealing the fact that 124 bottles of liquor of different varieties were being transported in the vehicle and thereafter, it was transferred to their vehicle and that pursuant to the said information, the omni bus was also seized by the respondents. The case of the petitioner is that she was not shown as an accused in the said case. The petitioner is the owner of the omni-bus and filed a petition before the Judicial Magistrate, Srivaikundam seeking possession for release of the same, but the same was dismissed and thereafter, the petitioner filed a revision petition before this Court in Crl.R.C.No.404/2014 and the same was allowed and the omni-bus was also handed over to the petitioner subject to the pending confiscation proceedings under Section 14 of the Tamil Nadu Prohibition Act, 1937.

2.1. Pursuant thereto, the first respondent had issued a show cause notice on 16.09.2014 under Section 14(4)(ii) of the said Act to which the petitioner submitted her explanation. However, it is alleged that without considering the said explanation, the impugned order was passed stating that the petitioner has to pay a sum of Rs.17,50,000/- in lieu of confiscation since the petitioner is the owner of the vehicle in question, otherwise, the respondents will go for auction. In the said impugned proceedings, the first respondent had informed that already confiscation order was passed in Na.Ka.No.06A/Parimuthal/Koo.Kaa.Ka./Ma.V/Toodi/14dated 08.11.2014. In the above background, the petitioner has challenged the order of the first respondent dated 08.11.2014.

3. The learned counsel for the petitioner has made the following submissions to assail the order impugned in this writ petition:-

(i) According to the petitioner, the first respondent did not serve the copy of the confiscation order passed under Section 14(4) of the Tamil Nadu Prohibition Act, 1937, which is appealable as per statute.

(ii) Secondly, the first respondent ought to have issued the impugned notice before passing the confiscation order under Section 14(4) of the Act, which he has failed to do so and

(iii). Thirdly, without giving a reasonable opportunity of being heard as per Section 14(4)(iii) of the Act, the first respondent had passed the confiscation order under Section 14(4) of the Act, that too, without serving the copy of the same to the petitioner and as per Section 14(5) of the Act, which is an appealable one. Hence, he prayed for appropriate orders.

<https://hcservices.ecourts.gov.in/hcservices/> The learned Government Advocate appearing for the respondents through his counter affidavit would submit that proper notice was issued to the petitioner and he was given an



opportunity of hearing to put forth his claim, but he did not avail of the same. Hence, he prayed for dismissal of the writ petition.

5. Considered the submissions made on either side and perused the materials available on record.

6. The entire issue revolves upon Section 14(4) of the Tamil Nadu Prohibition Act, 1937. It will be useful, if the said Section is extracted to decide the issue in question:-

"14.(4).....

(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;

.....

14.(5) Any person aggrieved by an order of confiscation under sub-section (4) may, within one month from the date of receipt of such order, appeal to the Court of session having jurisdiction.

7. On scanning through the entire materials placed before this Court and perusal of the Act extracted above, this Court is of the considered view that it finds much force in the contentions of the learned counsel for the petitioner that the first respondent ought to have issued notice before passing the confiscation order under Section 14(4) of the Act. Admittedly, he has not done so. Secondly, the first respondent without giving a reasonable opportunity of being heard as per 14(4)(iii) of the Act had passed the confiscation order under Section 14(4) of the Act, that too, without serving a copy of the same to the petitioner. The statutory right accrued on the petitioner cannot be slightly taken away by the respondents. In the counter affidavit, nowhere there is mention about the notice was properly served on the petitioner before issuing the order impugned in this writ petition. In paragraph No.8 of the counter affidavit, it is stated that since the petitioner denied the notice, it was pasted on the door of the petitioner on 13.11.2014 through the Village Administrative Officer concerned. If that is so, there is no embargo on the part of the respondents to send it through the registered post so as to the respondents could have avoided complications in the case on hand. Time and again, this Court comes across that the respondents claim that the notice was issued through the Village Administrative Officer. This could



have been much more better, had the respondents sent the notice through the registered post, apart from sending notice through the Village Administrative Officer concerned to sustain the claim of the petitioner. In any event, going by the averments and in view of the legal position involved in this case and the materials placed before this Court, this Court has no option but to sail along with the submission of the learned counsel for the petitioner.

8. In the light of the reasons and discussions stated above, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To,

1.The Additional Superintendent of Police,
Prohibition Wing-1,
Tuticorin District.

2.The Inspector of Police,
Kurumbur Police Station,
Tuticorin District.

+1cc to Mr.K. Samidurai, Advocate Sr.No.59142

+1cc to Spl.Government Pleader Sr.No.59417

SSM

VB/SKN/RSK/SAR1/05/07/2017/4P/5C

W.P (MD) No.18898 of 2014

08.06.2017