



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

AND

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.A.[MD].No.589 of 2017

and

C.M.P(MD).No.4921 of 2017

1. The Superintendent of Police,
Prohibition and Excise Wing,
Chennai.
 2. The Additional Superintendent of Police,
Prohibition and Excise Wing,
Trichy.
 3. The Inspector of Police,
Mannachanallur Police Station,
Trichy District.
- : Appellants/Respondents

Vs.

Mohan : Respondent/Writ petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 24.05.2017 made in W.P.(MD).No.9444 of 2017, on the file of this Court.

Prayer in WP(MD) . 9444/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ or order or direction in the nature of Writ of Mandamus directing the 2nd respondent to release the interim custody of the petitioners vehicle namely the Toyota Innova bearing registration No.TN-48-W-7989 pending confiscation proceedings of the 2nd respondent in Na.Ka.No.38/Ku.kaka/Mavi Abi/Trichy17 dated 15.04.2017 and pass such further or other orders as this Honble Court.

For Appellants	:Mr.VR.Shanmuganathan Special Government Pleader
For Respondent	:Mr.A.Balaji

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.A.Balaji, learned counsel appearing for the respondent. By consent, the Writ Appeal is taken up for final disposal at the stage of admission itself.



2. This Writ Appeal is directed against the order dated 24.05.2017 made in W.P.(MD).No.9444 of 2017.

3. The said Writ Petition was filed by the respondent herein for the issuance of a Writ of Mandamus, directing the second respondent therein to release the interim custody of the vehicle, namely, Toyota Innova bearing Registration No.TN-48-W-7989, pending confiscation proceedings, in and by which, the vehicle of the respondent was confiscated on the ground that it was used for transportation of rectified spirits.

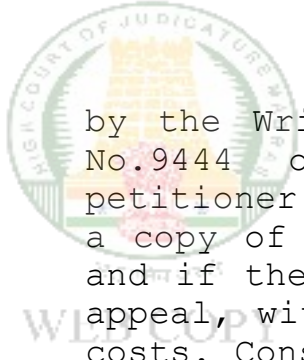
4. Admittedly, the criminal case is pending and the brother of the respondent/writ petitioner has been arrayed as an accused. The learned Special Government Pleader appearing for the appellants would submit that several of the accused have been detained under the provisions of Tamil Nadu Act 14 of 1982, as Goondas.

5. The case of the respondent is that the order of confiscation was anti-dated, viz., after the Writ Petition was disposed of and on the date when the Writ Petition was disposed of, the order of confiscation was not passed and the learned counsel for the appellants, who appeared before the Writ Court, also did not make any mention about any of order of confiscation.

6. Record of proceedings would show that the Writ Petition was heard by the Vacation Court and the Writ Petition was disposed of at the admission stage itself. Obviously, the appellants herein, who were arrayed as respondents in the Writ Petition, had not given any written instruction to the learned Additional Government Pleader, who appeared for them before the Writ Court. Be that as it may, as-on-date, there is an order of confiscation, as against which an appeal lies to the Sessions Court. The appeal, being effective and efficacious remedy, the respondent ought to have invoked the said remedy. The respondent/writ petitioner has admitted that a show cause notice was issued and he has submitted his reply. Therefore, it would be appropriate for the respondent/writ petitioner to canvass all the points in the appeal, which, according to the respondent, is being preferred and it is to be filed shortly.

7. In the light of the fact that already an order of confiscation was passed, the Court, exercising jurisdiction under Article 226 of the Constitution of India, would not be justified in issuing direction for the release of the vehicle. It is for the Appellate Court to consider all the points in the appeal to be filed by the respondent/writ petitioner before the Sessions Court.

8. For the above reasons, the order passed by the Writ Court calls for interference. Accordingly, the Writ Appeal is allowed; the order dated 24.05.2017 made in W.P.(MD).No.9444 of 2017 passed



by the Writ Court is set aside; the Writ Petition in W.P.(MD). No.9444 of 2017 stands dismissed and the respondent/writ petitioner is granted thirty days time from the date of receipt of a copy of this Judgment to file appeal before the Sessions Court and if the same is filed, the Sessions Court shall entertain the appeal, without rejecting the same on the ground of limitation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Prohibition and Excise Wing,
Chennai.
2. The Additional Superintendent of Police,
Prohibition and Excise Wing,
Trichy.
3. The Inspector of Police,
Mannachanallur Police Station,
Trichy District.

+1cc to M/S.A.Balaji, Advocate SR.No. 59850
+1cc to Special Government Pleader, SR.No. 60173

JUDGMENT MADE IN
W.A.[MD].No.589 of 2017
13.06.2017

nb
JM/SV MMS/SAR 1/21.06.2017/3P/6C