

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.32117 of 2017
and WMP.Nos.35260 and 35261 of 2017

S.Arul ... Petitioner

Vs.

1.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Kanchipuram District.

2.The Inspector of Police,
Prohibition Enforcement Wing,
Kanchipuram.

3.G.Hariharan ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent herein in Na.Ka.No.101/Ku.Ka.K./M.V.A.P/Kanchi/2017 dated 10.08.2017 and quash the same and consequently direct the respondents 1 and 2 herein to return the vehicle bearing Registration No.TN 22 CA 9308, Mahindra Maximo Cab Van belonged to the petitioner.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.J.Pothiraj
Special Government Pleader

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O R D E R

Heard Mr.S.Vijayakumar, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader for the respondents.

2.The petitioner has filed this writ petition challenging the order of confiscation passed by the first respondent confiscating the petitioner's vehicle, namely, Mahindra Maximo

Cab Van bearing registration No.TN-22-CA-9308 as it was carrying liquor bottles in violation of provision of Tamil Nadu Prohibition Act (TNP Act). Accordingly, a case has been registered against the petitioner in Crime No.296 of 2017 under Section 4(1)(a) of the TNP Act and the petitioner was arrested and remanded to judicial custody and subsequently released on bail. The petitioner would admit that the vehicle was intercepted and the liquor bottles were seized from the vehicle. The only ground on which the impugned order of confiscation has been challenged is by stating that in terms of Section 14(4) of the TNP Act, the petitioner was not provided with an opportunity. In terms of the said provision, the officer concerned may without prejudice to any other punishment to which the offender is liable under the provisions of the Act, order confiscation of the vehicle. However, before doing so, the Proviso to Sub-section (4) of Section 14 of the TNP Act provides the procedure to be followed which mandates the issuance of notice in writing intimating the person about the grounds on which it is proposed to confiscate the vehicle, afford an opportunity to make a representation in writing within a reasonable time not exceeding fourteen days and reasonable opportunity of being heard in the matter. In the instant case, this procedure had been followed by the first respondent but unfortunately, notice had been issued to the erstwhile owner of the vehicle, one Hariharan. In response to the said notice, the said Hariharan appears to have informed the first respondent that he is no longer the owner and he has sold the vehicle to the petitioner and then should have proceeded further. However, straight away the impugned confiscation order has been passed. Thus, it is clear that the impugned order has been passed in violation of Section 14(4) of the TNP Act. However, for such reason I do not propose to set aside the impugned order because the petitioner's grievance is that no show cause notice was issued to the petitioner and he was not given an opportunity to raise his objections and he was not heard in person. Therefore, what is required to be given is an adequate opportunity to the petitioner to put forth his stand.

3. Accordingly, the writ petition stands disposed of by directing the petitioner to treat the impugned order of confiscation as a show cause notice and submit their objections within a period of fifteen days from the date of receipt of a copy of this order, after which, the authorized representative of the petitioner may be heard in person by the first respondent and fresh orders be passed in accordance with law. Till the above proceedings are completed, the vehicle should be kept in safe custody of the respondents 1 and 2 and no proceedings shall be initiated for sale of the vehicle. The above direction shall be completed within a period of two weeks from the date on which

the reply/objection is filed by the petitioner. No costs.
Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

cse

To

1.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Kanchipuram District.

2.The Inspector of Police,
Prohibition Enforcement Wing,
Kanchipuram.

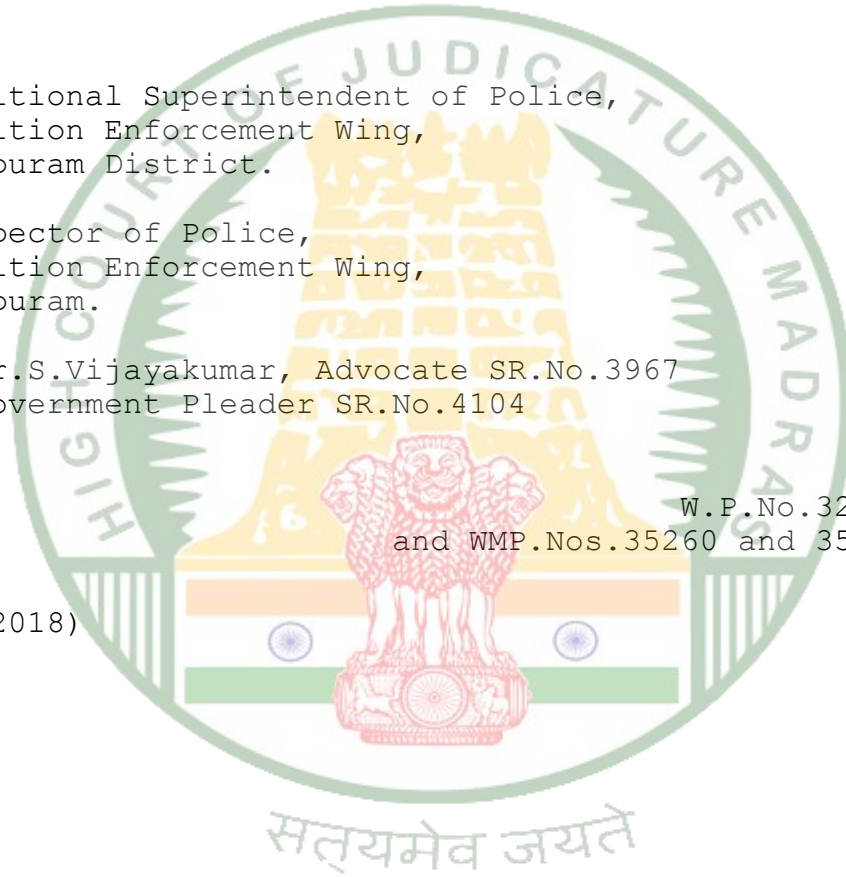
+1cc to Mr.S.Vijayakumar, Advocate SR.No.3967

+1cc to Government Pleader SR.No.4104

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GP (CO)

GN (23/01/2018)



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