

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018
CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.32218 of 2017 and
W.M.P.Nos.35479 & 35480 of 2017

Kamarudheen

... Petitioner

Vs.

1. State of Tamil Nadu
represented by the Commissioner and Secretary,
Prohibition and Excise Department,
Fort St. George,
Madras - 600 009.
2. The Superintendent of Police,
O/o The Superintendent of Police,
Prohibition Enforcement Wing,
Tiruppur - 641 604,
Tiruppur District.
3. The Additional Superintendent of Police,
District Police Superintendent Office,
Prohibition Enforcement Wing,
Tiruppur - 641 604,
Tiruppur District.
4. The Inspector of Police,
Prohibition Enforcement Wing,
Dharapuram,
Tiruppur District.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent, in Na.Ka.No.23/Pa.Mu/Ku.Kaa.Ka/MVA/Tiruppur/2017, dated 10.07.2017, culminating in the consequential proceedings of the respondent, dated 25.09.2017 and to quash the same and consequently, to direct the first respondent herein to release and handover the vehicle bearing Registration No.TN-39-AP-0204 (Maruthi Swift) free of any lien to the petitioner.

For Petitioner : Mr.P.Kalimuthu

For Respondents : Mr.J.Pothiraj
Special Government Pleader

O R D E R

Heard Mr.P.Kalimuthu, the learned counsel appearing for the petitioner and Mr.J.Pothiraj, the learned Special Government Pleader for the respondents and perused the materials placed on record, including the counter affidavit filed by the fourth respondent.

2. The order, impugned in this Writ Petition, has been passed by the third respondent, dated 10.07.2017, confiscating the Car, 'Maruthi Swift', owned by the petitioner, bearing Registration No. No.TN-39-AP-0204. Though the impugned order is a three page order, the conclusion arrived at, is only in the last para of the impugned order, by stating that, the petitioner has not responded to the show cause notice, dated 29.05.2017, and therefore, the proposal made in the show cause notice was confirmed and order of confiscation was passed. However, before the impugned order could have been passed, the third respondent ought to have seen as to whether the vehicle, in question, is involved in the commission of offence.

3. On a perusal of the FIR, dated 23.04.2017, bearing Crime No.258 of 2017, registered on the file of PEW Dharapuram Police Station, it is seen that the petitioner has been shown as seventh accused and the allegation against the petitioner is based on a confession statement given by Senthil Venkatesh, who is arrayed as sixth accused in the F.I.R. Apart from that, there is no specific averment that the vehicle was intercepted while transportation of the illicit liquor bottles, which is a pre-requisite for the purpose of ordering confiscation of a vehicle, which is alleged to have been used for the commission of offence. In the absence of any such finding, the third respondent could not have ordered confiscation of the vehicle.

4. Further, I find from the impugned order that the petitioner has been referred as second accused, whereas, the petitioner has been arrayed as seventh accused in the F.I.R. It is not clear, as to when the alleged confession statement was recorded from the sixth accused/Senthil Venkatesh, which has been referred to by the third respondent, in the impugned order. The learned counsel appearing for the petitioner would submit that, only after obtaining the order of anticipatory bail, and when the petitioner surrendered in compliance of the condition contained in the anticipatory bail order, the statement was recorded and that, per se, will not be enough to order for

confiscation of the vehicle. The confiscation of a vehicle is very serious matter, especially, in the light of how Section 14 of the Tamil Nadu Prohibition Act, 1937, (hereinafter, referred to as TNP Act). has been couched. The primordial requirement being that, the Collector or other Prohibition Officer, in charge of the District or any other Officer, Authorized by the State Government, in that behalf, is satisfied that an offence has been committed against the prohibited act, and whether or not, a prosecution is instituted for such offence, he may, without prejudice to any other punishment, to which, offender is liable under the Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence. Proviso to Section 14 provides for a procedure to be followed before passing the order of confiscation.

5. Thus, what is the required is satisfaction of the concerned officer that, the offence has been committed against the principles of the Prohibition Act using the vehicle, in question, for it to be confiscated and which order of confiscation, will be, without prejudice to any other punishment, to which, the offender is liable under the said Act. In the instant case, such satisfaction has not been recorded and it is largely due to the ipse dixit of other co-accused, which could not have been the basis for proper satisfaction of the concerned officer.

6. Thus, I find that the impugned order of confiscation of the vehicle is not sustainable in law. Accordingly, the Writ Petition is allowed, the impugned order is quashed. However, this will not prevent the Authorities from proceeding further with the criminal case, which has been registered against the petitioner. The fourth respondent is directed to release the vehicle, in question. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner and Secretary,
Prohibition and Excise Department,
Fort St. George,
Madras - 600 009.

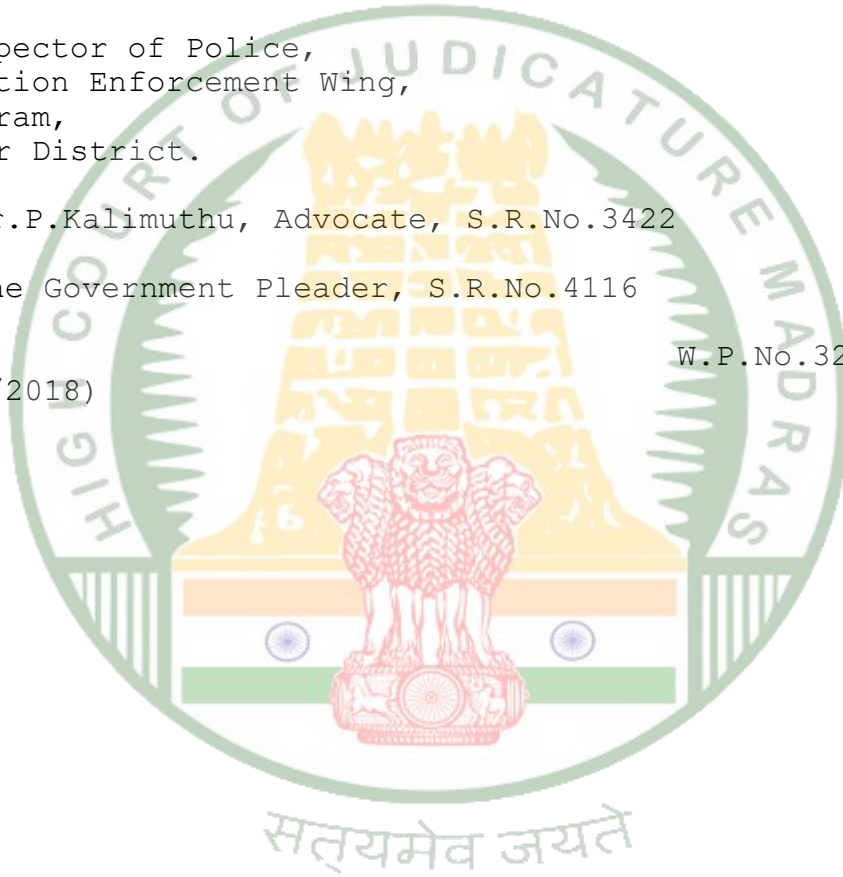
2. The Superintendent of Police,
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3. The Additional Superintendent of Police,
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Prohibition Enforcement Wing,
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Tiruppur District.
4. The Inspector of Police,
Prohibition Enforcement Wing,
Dharapuram,
Tiruppur District.

+1cc to Mr.P.Kalimuthu, Advocate, S.R.No.3422

+1cc to the Government Pleader, S.R.No.4116

W.P.No.32218 of 2017

RRK(13/02/2018)



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