



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2018

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH**

Crl.R.C.(MD)No.103 of 2018

Mohammed Shakul Hameed

: Petitioner

Vs.

The State rep. by  
The Sub Inspector of Police,  
Kumbakonam Taluk Police Station,  
Thanjavur District.  
(Crime No.446 of 2017).

: Respondent

**PRAYER:** Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records and set aside the order dated 26.12.2017 made in C.M.P.No.14086 of 2017 on the file of the learned Judicial Magistrate No.2, Kumbakonam, Thanjavur District and allow the above revision petition.

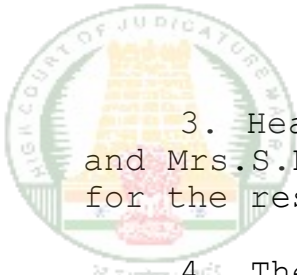
For Petitioner  
For Respondent

: Mr.B.Jameel Arasu  
: Mrs.S.Bharathi,  
Government Advocate (Crl.side)

**ORDER**

The respondent police registered a case in Crime No.446 of 2017 on 19.11.2017 under Section 4(1)(a) and Section 4(1-A) of the Tamil Nadu Prohibition Act against the petitioner herein. It is the specific case of the prosecution that this petitioner is the owner of the vehicle, viz., TATA METADOR bearing Registration No.PY 02 Q 6582; that on 19.11.2017 he transported Pondicherry liquor in his vehicle and brought the same to the Kumbakonam Vegetable Market for sale to the labourers there; and that at that time, the police party apprehended him with the vehicle and the contraband. Hence, the First Information Report.

2. The petitioner was released on bail by the Sessions Court, Thanjavur, on condition that he should report before the respondent police every day at 10.30 a.m., for a period of 15 days. After release on bail, the petitioner filed Cr.M.P.No.14086 of 2017 before the learned Judicial Magistrate No.2, Kumbakonam, under Sections 451 of the Code of Criminal Procedure for interim custody of the vehicle, which has been dismissed by the Court below on 26.12.2017, aggrieved by which, the petitioner has filed the present Criminal Revision Case.



3. Heard Mr.B.Jameel Arasu, learned counsel for the petitioner and Mrs.S.Bharathi, learned Government Advocate (Crl.side) appearing for the respondent.

4. The learned counsel for the petitioner submitted that the petitioner was not transporting liquor, but, was transporting only vegetables and a false case has been foisted upon him.

5. Per contra, the learned Government Advocate (Criminal side) submitted that the learned Magistrate has dismissed the petition on the ground that the petitioner had not complied with the bail conditions that was imposed upon him by the Sessions Court, inasmuch as he reported before the respondent police only for four days and did not report before the police thereafter. Therefore, the Trial Court felt that when the petitioner did not comply with the bail conditions, even if the vehicle is returned to him on conditions, he will not comply with those conditions and would violate the same.

6. In the opinion of this Court, the apprehension of the learned Judicial Magistrate No.2, Kumbakonam, is not unfounded. The conduct of the petitioner disentitles him to have custody of the vehicle. However, the learned counsel for the petitioner submitted that the petitioner was physically indisposed and, therefore, he was not able to appear before the police for four days and thereafter, he started appearing before the police and he is continuing to appear even now.

7. It is seen that the vehicle of the petitioner is involved in offences under the Tamil Nadu Prohibition Act. Under the said Act, the authorities have got the power to confiscate the vehicle under Section 14(4) of the Tamil Nadu Prohibition Act, 1937.

8. Mr.B.Jameel Arasu, learned counsel for the petitioner placed strong reliance upon the judgment of this Court in Crl.R.C.No.501 of 2011, dated 07.04.2011 [Sakthidevi vs. State by The Inspector of Police, Thittachery Police Station, Nagapattinam District], wherein a learned Single Judge of this Court has held that the power under Section 451 or 457 of the Code of Criminal Procedure can be exercised even pending confiscation proceedings under Section 14(4) of the Tamil Nadu Prohibition Act, 1937.

9. Be that as it may, a Division Bench of this Court in David v. Shakthivel, Inspector of Police -cum- Station House Officer reported in 2010(1) L.W. (Crl.)129 has given the following guidelines:

"Whenever seizure of properties involved in the commission of offence under Prohibition Act, exercise of power is not automatic. Court should afford sufficient opportunity to the prosecution to inform the court about the steps taken by the investigating Agency. Keeping in view the spirit of section 14(4) of TNP Act, court on its



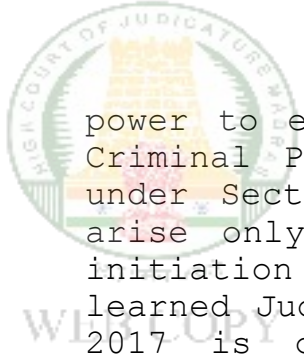
own should ascertain whether any confiscation proceedings has been initiated and the stage of confiscation proceedings."

"After affording sufficient opportunity to the prosecution and only after ascertaining about the steps taken for initiation of confiscation proceedings, court could exercise its discretion u/s. 451 or 457 Cr.P.C. Court could judiciously exercise its discretion with due care and caution keeping in view the spirit of section 14 (4) of TNP Act. Exercise of discretion under sections 451 or 457 Cr.P.C. is only after affording sufficient opportunity to the prosecution to get instructions. Subordinate Courts are directed to insist the Assistant Public Prosecutor to file written Memo as to the steps taken under section 14(4) of TNP Act or otherwise could only on receipt of written memo, court could proceed to exercise its power u/s.451 or 457 Cr.P.C."

"In case if the court orders interim custody of vehicle, the order should be speaking order recording reasons to order interim custody of the vehicle. In case if the Court orders interim custody of the vehicle, Court should obtain necessary undertaking from the owner of the vehicle to produce the vehicle as and when directed and send copy of undertaking to the District Collector/Prohibition Officer incharge of the District or other authorised officer in that behalf by the Government along with copy of the order passed by the Court.

We direct the Registry to place this order before the Hon'ble The Chief Justice for getting approval for being circulated to all the Subordinate Courts in the State of Tamil Nadu."

10. From a reading of the above guidelines, the Division Bench has clearly stated that before passing an order under Section 451 or 457 of the Code of Criminal Procedure, the Magistrate should ascertain whether confiscation proceedings have been initiated and the stage of confiscation proceedings. The Division Bench has further stated that opportunity must be afforded to the prosecution and only after ascertaining about the steps taken for initiation of confiscation proceedings, Court could exercise its discretion under Section 451 or 457 of the Code of Criminal Procedure. In other words, if no steps have been taken for initiation of confiscation proceedings, then, it is open to the Court to exercise the powers under Section 451 or 457 of the Code of Criminal Procedure. In the Division Bench judgment, the thrust is 'steps taken for initiation of confiscation proceedings'. After a vehicle is seized, the Investigating Agency should have to take steps for initiation of confiscation proceedings. If once confiscation proceedings have been initiated by the appropriate authority, the Court may not have the



power to exercise powers under Section 451 or 457 of the Code of Criminal Procedure. Thus, the power of the Court to pass orders under Section 451 or 457 of the Code of Criminal Procedure will arise only during the stage when steps are not being taken for initiation of confiscation proceedings. The order passed by the learned Judicial Magistrate No.2, Kumbakonam, in Cr.M.P.No.14086 of 2017 is only an interlocutory order. Now, the petitioner is reporting before the respondent police in compliance with the conditions imposed upon him by the Sessions Court while granting bail. Hence, his failure to report earlier cannot be a reason to reject any fresh application filed by the petitioner for return of the property under Section 451 or 457 of the Code of Criminal Procedure.

11. In the result, this Court gives liberty to the petitioner to file a fresh application under Section 451 or 457 of the Code of Criminal Procedure before the learned Judicial Magistrate No.2, Kumbakonam and on such application being filed, the same shall be dealt with in accordance with the law laid down by the Division Bench of this Court in David's case referred to supra.

12. With the above observation, this Criminal Revision Case is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.2,  
Kumbakonam,  
Thanjavur District.

2.The Sub Inspector of Police,  
Kumbakonam Taluk Police Station,  
Thanjavur District.

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1CC TO M/S.B.JAMEEL ARASU, ADVOCATE, SR NO.52729

Order made in  
Cr1.R.C.(MD)No.103 of 2018  
02.03.2018

SML

**MS/GT/SAR-2/20.03.2018/4P.5C**