



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Crl.R.C(MD)No.582 of 2018

and

Crl.M.P. (MD) No.8373 of 2018

S.Praburajan

: Petitioner

Vs.

State rep. by its
The Sub Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.
(Crime No.347 of 2018)

: Respondent

PRAYER: Revision is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records of the learned Judicial Magistrate, Aruppukottai, Virudhunagar District in Cr.M.P.No.3646 of 2018 dated 14.09.2018 and set aside the order passed against the petitioner.

For Petitioner	: No appearance
For Respondent	: Mr.A.Robinson, Government Advocate(Crl.Side)

ORDER

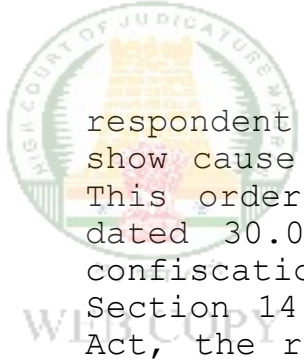
This criminal revision case is directed against the order of the trial Court dismissing the petition filed for return of property under Section 451 Cr.P.C.

2.No representation for the revision petitioner. Heard the learned Government Advocate(Crl.Side) appearing for the respondent.

3.The property involved in this petition is a motor vehicle bearing Registration No.TN 67 BX 8850, which stands in the name of the revision petitioner/accused.

4.The case of the prosecution is that he has transported illegally 110 liquor bottles without proper licence and therefore, he is liable to be prosecuted under section 4(1)(a) of TNP Act and the vehicle is also liable to be confiscated under Section 13(A) of TNP Act.

5.According to the revision petitioner, earlier the respondent issued a show cause notice dated 30.07.2018 calling him to show cause why the vehicle should not be confiscated for violating TNP Act. Thereafter, the respondent has passed an order of confiscation on 11.10.2018, wherein he has directed him to pay a sum of Rs.45,000/- being the value of the vehicle or else the vehicle will be put to public auction. To this notice, the



respondent has given seven days time to the revision petitioner to show cause why they should not proceed further with public auction. This order also indicates that pursuant to the show cause notice dated 30.07.2018 issued to the revision petitioner the order of confiscation is passed on 05.09.2018 by exercising the power under Section 14(4) of the TNP Act. Though, under Section 14(5) of the Act, the revision petitioner has right to prefer appeal before the Court of Sessions challenging the order of confiscation, he has not exercised statutory remedy, but has again filed the petition under Section 451 Cr.P.C for return of vehicle claiming that the confiscation is not a bar to file a petition under Section 451 Cr.P.C.

6.The trial Court after considering the facts and law involved, has held that when there is a statutory remedy to challenge the confiscation proceedings, so the application under Section 451 Cr.P.C for return of vehicle, pending disposal of the case, is not maintainable. To justify the said conclusion, the Court below has considered the judgment of this Court rendered in respect of the scope and object of Section 14(4) of TNP Act 1937.

7.This Court finds that there is no error in the finding of the trial Court's decision dismissing the petition under Section 451 Cr.P.C.

8.Section 14(4) of TNP Act reads as under:-

Notwithstanding anything contained in Subsection 1 to 3 if the Collector or other Prohibition Officer in charge of the district or an other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is justified for such offence, he may without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence.

9.Notwithstanding anything contained in Subsection 1 to 3 of Section 14 the Collector or other Prohibition Officer is empowered to proceed with the confiscation of the vessel or vehicle involved in prohibition offence whether or not a prosecution is instituted. This power conferred on Collector or other prohibition Officer is independent to the power to prosecute the offenders.

10.Therefore, in this case the respondent before exercising power under Section 14(4) of the Act has given an opportunity to the petitioner herein to show cause why the vehicle involved in the offence, shall not be confiscated. Only after affording fair opportunity, the respondent has proceeded further and has passed order on 11.10.2018 giving option to the revision petitioner either to pay the cost of the vehicle or allow the respondent to put the vehicle in auction and recover the cost.



11.If the revision petitioner is aggrieved by the said order, statute provides appeal remedy under Section 14(5) of TNP Act 1937, which is reads as under.:-

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

12.Instead of exercising the statutory remedy as contemplated under Section 14(5) of the TNP Act, the revision petitioner herein has approached the trial Court again for return of the vehicle under Section 451 Cr.P.C. The trial Court has rightly pointed out the error and dismissed the petition. The present revision petition is directed against the order passed by the trial Court.

13.This Court finds no merit in the criminal revision case. When statute prescribes remedy, the person aggrieved cannot resort to any other provision, which is not available for him and succumbent the established law. Neither 451 Cr.P.C nor 397 or 401 Cr.P.C can be a remedy for the revision petitioner herein, when the authorities have exercised their power as per law contemplated under the provision of TNP Act and the said Act itself provides appellate remedy. Hence this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Judicial Magistrate,
Aruppukottai, Virudhunagar District.

2.The Sub Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.

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

+1cc to M/s. A.S.Rajeswari, Advocate Sr.No.92144

cp

VB/SV/SAR2/12.12.2018/3P/5C