

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.3290 OF 2019

&

W.M.P.NOS.3562, 3566 & 3569 OF 2019

R.Jeyasudha

.. Petitioner

vs.

1. The Additional Superintendent of Police  
Prohibition Enforcement Wing (PEW)  
Salem, Salem District
2. The Inspector of Police  
Prohibition Enforcement Wing (PEW)  
Attur Police Station  
Salem District  
Cr.No.269/2018
3. The Inspector of Police  
Avadi Police Station  
Avadi, Chennai  
Cr.No.278/2018
4. P.Ayyadurai
5. Kumari
6. Velu (a) Velu Chettiyar
7. Kaviyarasan

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 1<sup>st</sup> respondent in his proceedings No.Na.Ka.No.22/Kuu.Kaa.Ka/Ma.Vi.Aa.Pi/Pa.Mu/Se.2018 dated 25.11.2018 and quash the same and consequently directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to hand over the vehicle bearing registration number TN 76 S 2840 with

Chasis Number MC1E4CGA4D9017595 and Engine Number D37023063 to the petitioner.

For Petitioner : Mr.T.Balaji

For Respondents : Mr.R.P.Pratap Singh  
Government Advocate for R1 to R3  
No appearance for R4 to R7

#### ORDER

Mr.T.Balaji, learned counsel on record for writ petitioner and Mr.R.P.Pratap Singh, learned counsel on behalf of official respondents i.e., Respondents 1 to 3 are before this Court. Respondents 4 to 7 are private respondents.

2.A perusal of the case file placed before this Court shows that private respondents have been duly served. This Court is informed that no one has entered appearance on behalf of private respondents 4 to 7. No one present in Court though name of Respondents 4 to 7 called out alluded thrice in the Court and in the adjoining corridors.

3. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

4. Nucleus of the instant writ petition is a Maxicab, maker being Force Motor limited, white colour, bearing Registration No.TN 76 S 2840 with Engine No. D37023063, Chasis No.MC1E4CGA4DP017595 (wrongly given as MC1E4CGA4D9017595 in the registration certificate issued by the jurisdictional Registering Authority under Motor Vehicles Act), which shall hereinafter be referred to as 'said vehicle' for the sake of brevity, convenience and clarity.

5.After hearing learned counsel for writ petitioner as well as the learned Government Advocate on behalf of official respondents, it comes to light that the entire matter turns on a very narrow compass and it may not be necessary to advert to facts in great detail.

6. Short facts shorn of micro details / particulars are that said vehicle belongs to the writ petitioner, writ petitioner had given a complaint in the jurisdictional police station i.e., Avadi Police Station vide FIR No.278 dated 18.04.2018 stating that said vehicle has been stolen. To be noted, the Inspector of Police, Avadi Police Station has been arrayed as Respondent No.3 in the instant writ petition and there is no dispute about this FIR.

7. When things stood thus, 'Prohibition Enforcement Wing' ('PEW' for brevity) of the Police Department in Attur in Salem District intercepted said vehicle which is said to have been driven by one Kaviyarasan. According to PEW version, Rectified Spirit (vuprhak;) was being smuggled in the said vehicle. Therefore, PEW seized the said vehicle and registered a case under appropriate provisions inter alia under 'Tamil Nadu Prohibition Act (Tamil Nadu Act 10 of 1937)', which shall hereinafter be referred to as 'TNP Act' for brevity.

8. As mentioned supra, this writ petition now turns on a narrow compass and it can therefore be straight away mentioned that this Court is informed without any disputation that said vehicle was plying at the time of interception on 19.06.2018 by PEW with a false number Plate TN 07 BK 1445. This Court is also informed that in police investigations, it has come to light that another vehicle with TN07 BK 1445 is in the possession of another individual, but it is not necessary to delve into the same any further.

9. Under the aforesaid circumstances, first respondent passed an order signed on 25.11.2018 bearing reference Na.Ka.No.22/Kuu.Kaa.Ka /Ma.Vi.Aa.Pi/Pa.Mu/Se.2018 (hereinafter 'impugned order' for brevity). A perusal of the impugned order reveals that it has been passed under Section 14(4) of TNP Act and vide impugned order there is confiscation of said vehicle.

10. Thereafter, writ petitioner moved the jurisdictional Magistrate's Court namely, Judicial Magistrate II, Attur for return of property vide Crl.M.P.No.2993 of 2018. Learned Judicial Magistrate II, passed an order dated 24.12.2018 in the said return of property petition and the paragraph containing the operative portion reads as follows:

'எனவே மேற்படி வழக்கில் கைப்பற்றப்பட்ட வாகனத்தை அரசுக்கு (Engine No.D37023063, Chasis No.MC1E4GGA4D9017595) அரசுக்கு ஆதாயமாக்கும் நடவடிக்கையை இடைக்காலமாக நிறுத்தி, வழக்கு சொத்தை இந்நீதிமன்றத்தில் ஆஜர்படுத்த உத்தரவிடப்படுகிறது. மதுவிலக்கு போலீசாரின் குற்ற வழக்கிற்கும் மனுதாரருக்கு குற்றத் தொடர்பு, இருக்கும்பட்சத்தில் அதனை நீரூபித்து மேற்படி வழக்கு சொத்தை பொறுத்து முடிவ, செய்துகொள்ளப்படும் துன்று இந்நீதிமன்றம் உத்தரவிடுகிறது.'

11. This brings us back to the impugned order. As already alluded to supra, impugned order has been passed under Section 14(4) of TNP Act. It is appropriate to extract Section 14(4) of TNP Act together with the proviso, which reads as follows:

'14. Confiscation how ordered.\_(1)....

(2).....

(3).....

(4) Notwithstanding anything contained in sub-section (1) to (3), the Collector or other Prohibition Officer in-charge of the district or any 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 instituted for such offence, he may, without prejudice to any other punishment in 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.

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given\_

(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle;

(ii) an opportunity of making a representation in writing within a reasonable time, nor exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter:

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.'

12. According to first proviso to Section 14(4) of TNP Act, before passing an order of confiscation, it is necessary that a notice should be issued informing the grounds on which confiscation is being made, thereafter, an opportunity for making a representation in writing and then reasonable opportunity of being heard should also be given. A perusal of the impugned order reveals that the first respondent has found out before passing the impugned order that said vehicle was plying with a false number plate, that said vehicle belongs to the writ petitioner and that the correct vehicle number of said vehicle, Engine Number and Chasis Number details are as stated above. To be noted, this is articulated in the impugned order itself.

13. This takes us to the first proviso to Section 14(4) of TNP Act. A perusal of the impugned order reveals that there is a reference to communications on 31.08.2018, 03.09.2018 and 04.09.2018 said to have been sent to the writ petitioner. Learned counsel for writ petitioner, on instructions, submitted that no such communications were ever received by the writ petitioner. From the records available before this Court also, there is nothing to show that such communications were duly served. It comes to light that it has been erroneously served on the fourth respondent on 20.12.2018. To be noted, impugned order has been signed on 24.11.2018. Therefore, service, if any, is also post impugned order. As already alluded to supra, the impugned order itself brings to light that even before the impugned order, first respondent has, through investigation, found that the said vehicle belongs to the writ petitioner and that it was plying with a false number plate at the time of interception on 19.06.2018. Therefore, statutorily imperative conditions precedent for passing an order of confiscation adumbrated in Section 14(4) have not been adhered to, namely notice in writing conveying grounds of confiscation, opportunity to make representation in writing and a personal hearing.

14. Therefore this Court considers it appropriate to set aside the impugned order on this ground without expressing any opinion on the merits of the matter.

15. It is also submitted that in the investigation thus far, there is nothing to show the complicity of the writ petitioner in any of the offences under TNP Act.

16. Therefore, the following order is passed:

a) Impugned order dated 25.11.2018 bearing reference No.Na.Ka.No.22/Kuu.Kaa.Ka/Ma.Vi.Aa.Pi/Pa.Mu/Se.2018 made by the first respondent is set aside. It is made clear that impugned order is set aside solely on the ground that opportunity has not been given to the writ petitioner in accordance with first proviso to Section 14(4) of TNP Act. In other words, no view or opinion whatsoever is expressed on merits qua impugned order.

b) It is open to the first respondent to proceed under Section 14 of TNP Act afresh, if there is a need to do so. Likewise, it is open to the writ petitioner to pursue the return of property application being CrI.M.P.No.2993 of 2018 on the file of the

jurisdictional Magistrate, namely Judicial Magistrate,  
Attur.

This writ petition is disposed of with the above directions.  
There shall be no order as to costs. Consequently, connected  
miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Additional Superintendent of Police  
Prohibition Enforcement Wing (PEW)  
Salem, Salem District
2. The Inspector of Police  
Prohibition Enforcement Wing (PEW)  
Attur Police Station  
Salem District
3. The Inspector of Police  
Avadi Police Station  
Avadi, Chennai

+1cc to Mr.T.Balaji, Advocate, S.R.No.70078  
+1cc to the Government Pleader, S.R.No.69782

W.P.No.3290 of 2019 &  
W.M.P.Nos.3562, 3566 & 3569 of 2019

RR(CO)  
CS/09/09/2019