

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.11945 of 2019

Madhuraj

...Petitioner/Accused No.1

-Vs-

The Forest Range Officer,
Denkanikottai Range.
Denkanikottai,
Krishnagiri - 635 107.

...Respondent/ Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the return endorsement dated 08.02.2019 passed in CMP Sr.No.385 of 2019 in STOR No.1 of 2018 on the file of the Hon'ble Judicial Magistrate, Denkanikottai and direct the respondent to release the petitioner's vehicle Bolero Pick up Van bearing Registration number TN70 S 6438, FRH Yellor Colour, with Chasis No.MA1ZN2GHKF3L40433 and Engine No.GHF4L58140 seized by the respondent to the petitioner.

For Petitioner : Mr.Sucendran.S

For respondent : Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed challenging the order of the Court below returning the petition filed by the petitioner seeking for return of vehicle.

2. It is seen from records that the petitioner is the owner of the vehicle and he had leased his vehicle to some other person who has used the vehicle for committing the offence under the Tamil Nadu Forest Act, 1882. An FIR was registered in Crime No.STOR No.1 of 2018 dated 05.11.2018 and the vehicle was also seized.

3. The petitioner filed a petition before the Court below under Section 451 r/w 457 of Cr.PC seeking for return of the

vehicle. The said petition was returned with an endorsement that since confiscation proceedings have already been initiated under Section 49 A and B, the regular Magistrate Court cannot entertain a petition for return of vehicle under Section 451 r/w 457 of Cr.PC.

4. The learned counsel for the petitioner submitted that the Forest Act does not prohibit entertaining a petition for return of vehicle by a Magistrate under Section 451 r/w 457 of Cr.PC. In order to substantiate his submissions, the learned counsel relied upon the Judgment of this Court in [David Versus Shakthivel, Inspector of Police - cum- Station House Officer, Prohibition Enforcement Wing, Tindivanam, Villupuram District] reported in 2010 1 MLJ (Cr1) 929. The learned counsel further submitted that even though the said judgment was passed after taking into account the provisions of Tamil Nadu Prohibition Act, the said Judgment will apply to the facts of the present case also, since the provisions under Section 49A and B of the Tamil Nadu Forest Act is almost in pari materia to the prohibition Act.

5. The learned Government Advocate appearing on behalf of the respondent submitted that once confiscation proceedings have commenced under 49 A & B of the Tamil Nadu Forest Act, 1882, the Magistrate Court cannot entertain a petition for return of vehicle, in exercise of its jurisdiction under Section 451 r/w 457 Cr.PC.

6. This Court has carefully considered the submissions made on either side and also the materials placed on record.

7. It will be useful to extract the provisions of Section 49 A of the Tamil Nadu Forest Act, 1882 which is as follows:-

49-A Confiscation by Forest Officers in certain cases :- (1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest officer is believed to have been committed in respect of any scheduled timber which is the property of the Government, the officer seizing the property under Sub-section (1) of Section 41 shall, without any unreasonable delay, produce it together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer not below the rank of an Assistant Conservator of Forests authorised by the Government in his behalf, by notification, in the Tamil Nadu Government Gazettee (hereinafter referred to as the authorised officer).

2. Where the authorised officer himself seizes

under Sub-Section (1) of Section 41, any scheduled timber which is the property of the Government or where any such property is produced before the authorised officer under Sub-section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

3(a) Where the authorised officer after passing an order of confiscation under Sub-Section (2) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sold as aforesaid, the proceed thereof after deduction of the expenses of any such auction or other incidental expenses related thereto shall, where the order of confiscation made under this section is set aside or annulled by an order under Section 49-C or Section 49-D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order.

8. The above said provision gives powers to the authorized officers to confiscate any property which is involved in an offence under the said Act. The Confiscation proceedings under the Tamil Nadu Forest Act are quasi judicial in nature on the basis of the satisfaction of the authorized officer. The procedure to be followed for confiscation is provided under Section 49 B of the Act.

9. The only issue to be considered in this petition is whether a vehicle which is already a subject matter of confiscation under the Forest Act can be released by a Magistrate Court in exercise of its jurisdiction under Section 451 r/w 457 of Cr.PC.

10. It will be useful to make a reference to the Judgment cited by the learned counsel for the petitioner in [David Versus Shakthivel, Inspector of Police - cum- Station House Officer, Prohibition Enforcement Wing, Tindivanam, Villupuram District] reported in 2010 1 MLJ (Cr1) 929 referred supra.

11. The relevant portion of the judgment is extracted hereunder:-

21 Learned Advocate General submitted that when the vehicle is seized which is involved in a prohibition

offence, power of court and Executive to order confiscation of vehicle involved is overlapping. Code of criminal Procedure is Central enactment made by virtue of entry to List III of 7th Schedule to the Constitution. Learned Advocate general fairly submitted that since power of executive and power of Court in dealing with the vehicle and passing orders of confiscation is overlapping to certain extent, Sec.14 (4) of TNP Act, a State enactment cannot take away exercise of jurisdiction of Court under sections 451 or 457 Cr. P. C. But the learned advocate General hastened to submit that exercise of power by the Court must be with extreme care and caution, keeping in view the object and spirit of Sec.14 (4) of the Act which is both punitive and deterrent.

22 As rightly submitted by the learned Advocate General, Sec.14 (4) of the Act does not take away the jurisdiction of the Court and exercise of power under sections 451 or 457 Cr. P. C. But discretion of Court has to be exercised judiciously and exercised with due care and caution. Where seizure of vehicle involved in an offence of prohibition reported to the Magistrate, exercise of discretion and ordering of interim custody under sections 451 or 457 Cr. P. C. is not automatic. Notwithstanding the involvement of the vehicle in the commission of prohibition offence, if there is automatic exercise power by the Court, Section 14 (4) of the Act would become a dead letter. In our view, order of confiscation of a vehicle involved in the commission of offence under section 14 (4) of TNP Act is not only punitive but also deterrent. While so, when the vehicle is involved in the commission of a prohibition offence, exercise of discretion by the Court with care and caution would serve various purposes. While before passing any order in respect of the vehicle involved in the commission of prohibition offence, Court should keep in view the spirit of Sec.14 (4) of the Act and the benevolent objects of Tamil nadu Prohibition Act.

23 Before proceeding to exercise the jurisdiction under sections 451 or 457 Cr. P. C. in respect of the vehicle involved in the commission of prohibition offence, Court has to ascertain from the Prosecutor whether any confiscation proceedings has been initiated by the District Collector/prohibition Officer or authorised Officer as contemplated under sec.14 (4) of tnp act. Only after affording sufficient opportunity, Court could proceed to exercise its

jurisdiction and keeping in view the spirit of sec.14 (4) of tnp act, Court to pass appropriate speaking order.

24 It is pertinent to note that as against the order passed under sec.14 (4) of tnp act, appeal lies before the Court of Sessions having jurisdiction. For instance let us assume that order of confiscation has been passed by the District Collector or other Prohibition Officer incharge of the District or any other authorised officer. Under sec.14 (5) of tnp act, any person aggrieved by the order of confiscation under Sec.14 (4) of the Act within one month may appeal to the Court of Sessions having jurisdiction. In such case, where an order of confiscation has been passed, if Magistrate has to pass an order for interim custody, evidently Magistrate would be transgressing upon the powers of the Executive and Sessions judge. To avoid such situation, in dealing with the vehicles involved in a prohibition offence, exercise of powers of the Court under sections 451 or 457 Cr. P. C. should always be with due care and caution.

12. The provisions of Section 49A of the Tamil Nadu Forest Act does not in any way take away the Jurisdiction of the Magistrate Court to exercise its power under Section 451 or 457 of Cr.PC. The confiscation of a vehicle involved in the commission of an offence under the Tamil Forest Act is not only punitive in nature but also a deterrent. When a vehicle is involved in the commission of offence under the Tamil Nadu Forest Act and there are prima facie materials to show that the owner of the vehicle did not have any knowledge or connivance in the commission of the offence, he can always file an application for return of vehicle under Section 451 or 457 of Cr.PC. But, however the Court while exercising its powers will have to do it with care and caution and should provide an opportunity to the Public Prosecutor and also must keep in mind the spirit behind Section 49A of the Tamil Nadu Forest Act, 1882 and its benevolent object.

13. Even though, the Judgment cited by the learned counsel for the petitioner deals with the case under the Tamil Nadu Prohibition Act, the ratio in the said Judgment can be applied even in a case where confiscation proceedings have been initiated under the Tamil Nadu Forest Act.

14. In view of the above, the reason given by the Court below for returning the petition filed by the petitioner is unsustainable and the same is hereby set aside. The Court below

is directed to consider the petition afresh by keeping in mind the Judgment of the Hon'ble Division Bench referred supra and after affording an opportunity to the prosecution. This exercise shall be completed by the Court below within a period of one month from the date of a receipt of copy of this order.

15. Accordingly, this Criminal Original petition is allowed.
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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Forest Range Officer,
Denkanikotai, Denkanikotai.
Krishagiri - 635 107.
2. The Judicial Magistrate,
Denkanikotai.Krishnagiri.
3. The Public Prosecutor,
High Court, Madras

+1cc to Mr.S.Ramesh, Advocate, SR.No.45573

Cr1.O.P.No.11945 of 2019

Kak (28/06/2019)

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