

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.05.2019

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

CrI.RC. No.418 of 2019
and
CrI.M.P. No.6476 of 2019

G.Beemaraao

... Petitioner

..Vs..

The State by
Rep. Sub-Inspector of Police
PEW Madurantagam Police Station,
Kancheepuram District.
(Crime No.80 of 2019)

.... Respondent

PRAYER: Criminal Revision case filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the order passed in CrI.M.P. No.684 of 2019 in Crime No.80 of 2019 by the District Munsif Cum Judicial Magistrate, Uthiramerur dated 29.03.2019 and direct the respondent to release the vehicle bearing registration No.TN-19-AY-3208 Mahindra Bolero Pickup to this petitioner.

For Petitioner : Mr.S.Anburaja

For Respondent : Mr.M.Prabhavathi,
Additional Public Prosecutor

सतयमेव जयते
O R D E R

This Criminal Revision has been filed against the order of the Court below dismissing the petition filed by the petitioner seeking for the release of his vehicle.

2. The vehicle was seized by the respondent since it is alleged to have been involved for an offence of transporting illicit alcohol and a case has been registered against six accused persons for an offence under Section 4(1) (A), 4 (1-A), TNP Act and 468, 471 and 420 IPC read with 7 & 11 TNRS Rules 2000 (Transporting). The petitioner claims himself to be the owner of the vehicle which he had leased to one of the accused person K. Shanmugam. The case of the petitioner is that the accused person had illegally used the vehicle to commit an

offence and this petitioner as the owner of the vehicle should not be penalised for it and the petitioner is entitled for the release of vehicle under Section 451 read with 457 of Cr.P.C.

3. The Court below has dismissed the petition mainly on the ground that confiscation proceedings have already been initiated and it is pending before the competent authority and therefore, the petition for release of vehicle is not maintainable.

4. The learned counsel for the petitioner submitted that the power for release of vehicle under Section 451 of Cr.P.C is not taken away, just because, the respondent has initiated confiscation proceedings under section 14 of the Tamil Nadu Prohibition Act before the competent authority. The learned counsel further submitted that if the vehicle is exposed to rain and shine, it will get rusted and ultimately the petitioner will have to lose his vehicle.

5. The learned Additional Public Prosecutor submitted that the Court below has properly appreciated the facts and the law applicable to it and has come to a correct conclusion that the criminal Court cannot exercise its jurisdiction for releasing the vehicle under Section 451 of Cr.P.C.

6. This Court has carefully considered the submissions made on either side. The case involves the examination of powers of the Magistrate under Section 451 of Cr.P.C. vis-a-vis under Section 14(4) of the Tamil Nadu Prohibition Act, which deals with the powers of the Executive to order confiscation of the vehicle involved in the commission of a prohibition offence. The provision under Section 14(4) of the Tamil Nadu Prohibition Act, does not take away the jurisdiction of the Criminal Court in exercising its power under Section 451 or 457 of Cr.P.C. In this regard, the judgment of the Division Bench in the case of David vs. Shakthivel, Inspector of Police-cum-Station House Officer, Prohibition Enforcement Wing, Tindivanam, Villupuram District reported in (2010) 1 MLJ (Crl.) 929 can be taken note of. The relevant portions 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."

7. From the above judgment, it is very clear that the Criminal Court can exercise its jurisdiction under Section 451 or 457 of Cr.P.C, in respect of the vehicle involved in the commission of prohibition offence. However, the petition should be decided with due care and caution and only after affording sufficient opportunity to the prosecution and by keeping in mind, the object and spirit of Section 14(4) of the TNP Act, which is both punitive and deterrent.

8. In view of the above, the reason given by the Court below for the dismissal of the petition is unsustainable and it directly goes against the judgment of the Division Bench of this Court referred supra.

9. In the result, the order passed by the Court below in Crl.M.P. No.684 of 2019 dated 29.03.2019 is hereby set aside. The Court below is directed to consider the petition afresh by keeping in mind, the judgment of the 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 (1) month from the date of receipt of a copy of this order.

10. Accordingly, this Criminal Revision Case is allowed. Connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते Assistant Registrar (VO)

//True copy//

Sub Assistant Registrar

rkp

To

1. The District Munsif-cum-Judicial Magistrate, Uthiramerur

2. The Sub-Inspector of Police
PEW Madurantagam Police Station,
Kancheepuram District

3. The Public Prosecutor,
High Court, Madras - 600 104.

+1cc to Mr.S.Anuraja, Advocate SR.No.43376

CrI.RC. No.418 of 2019
and
CrI.M.P. No.6476 of 2019

EV (CO)
GMY (10/05/2019)



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