

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.21016 of 2019
and W.M.P. Nos. 20201 & 20202 of 2019

A.Vetrivel

.... Petitioner

vs.

1. The Additional Superintendent of Police,
 Confiscation Officer,
 Prohibition and Excise Division,
 Ariyalur District.

2. The Inspector of Police,
 Thirumanur Police Station,
 Ariyalur District

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records of the 1st respondent in his impugned proceedings bearing Na.Ka.No.(order) 511 /ADSP/PEW/ALR/2018 dated 14.12.2018 and to quash the same.

For Petitioner : Mr.Ilamurugu

For Respondents : Mr.M.Mohammed Riyaz,
 Additional Public Prosecutor

ORDER

This writ petition has been filed challenging the proceedings of the

petitioner was confiscated.

2. The petitioner is the owner of the vehicle. This vehicle was seized by the respondent police during a surprise inspection and an FIR came to be registered in Crime No.292 of 2018 for an offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act. The petitioner is not an accused in this case.

3. The petitioner filed an application before the concerned Court seeking for return of vehicle. At that point of time, the petitioner came to know that the 1st respondent has already passed an order dated 14.12.2018 under Section 14 and 14-A of the Tamil Nadu Prohibition Act and the vehicle belonging to the petitioner has been confiscated.

4. The learned counsel for the petitioner submitted that the impugned order was passed by the 1st respondent without giving an opportunity to the petitioner. The learned counsel relied upon Section 14(4) (i) and (ii) of the Tamil Nadu Prohibition Act, 1997 and submitted that such an order can be passed only after affording an opportunity to the owner of the vehicle. The learned counsel further submitted that this provision itself contemplates a representation that can be given by the owner of the vehicle within a period of 14 days.

5. The learned counsel for the petitioner submitted that even though Section 14(5) of the Tamil Nadu Prohibition Act provides for an appeal against the order of confiscation passed by the 1st respondent, the impugned order passed by the 1st respondent suffers from illegality on the ground that it was passed without affording an opportunity to the petitioner to put forth his case and therefore, there is violation of principles of natural justice. The learned counsel submitted that once there is violation of principles of natural justice, an appeal remedy is not a bar for entertaining the writ petition.

6. Heard the learned Additional Public Prosecutor appearing on behalf of respondents.

7. A look at the impugned order itself reveals the fact that a show cause notice dated 07.12.218 was issued to the petitioner and the impugned order has been passed on 14.12.2018, that is within seven days from the date of show cause notice. It is therefore apparent that sufficient opportunity was not given to the petitioner before the impugned order was passed by the 1st respondent. The order suffers from illegality since it has been passed in violation of principles of natural justice.

8. In the result, the impugned order passed by the 1st respondent dated 14.12.2018 is hereby set aside and the 1st respondent is directed to issue fresh notice to the petitioner and conduct the proceedings after affording sufficient opportunity to the petitioner and pass orders, in accordance with law. This process shall be completed within a period of four weeks from the date of receipt of copy of this order.

9. This writ petition is allowed accordingly. Consequently, the connected miscellaneous petitions are also closed. No costs.

17.07.2019

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order
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Note: Issue Order Copy on 22.07.2019

To

1. The Additional Superintendent of Police,
Confiscation Officer,
Prohibition and Excise Division,
Ariyalur District.

2. The Inspector of Police,
Thirumanur Police Station,
Ariyalur District.

3. The Public Prosecutor,
High Court of Madras,
Madras.

N. ANAND VENKATESH, J.

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W.P No.21016 of 2019

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