

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.633 of 2019

Sri Hari Finance,
Represented by its Proprietor,
M.Ramachandran,
No.94, L.B.Road,
Avvai Nagar, Thiruvannamiyur,
Chennai-600 041.

.. Petitioner

Vs.

1. The State represented by
Inspector of Police,
PEW-Madurandagam Police Station.

2. G.Gnanamani,
S/o.Munusamy,
No.68, Mudaliyar Kuppam,
Cheyyur Taluk,
Kanchipuram District-603 302.

... Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 07.06.2019 passed in
Crl.M.P.No.4007 of 2019 on the file of the Judicial Magistrate,
Madurandagam and to return of the vehicle Piaggio Auto Rickshaw
bearing Registration No.TN 19 AZ 0666.

For Petitioner : Mr.V.Shanmugham

For R1 : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

WEB COPY

O R D E R

This petition has been filed seeking to set aside the order
dated 07.06.2019 passed in Crl.M.P.No.4007 of 2019 on the file
of the Judicial Magistrate, Madurandagam and to return Piaggio
Auto Rickshaw bearing Registration No.TN 19 AZ 0666.

2. The precis of the facts is as under:

2.1 On 12.08.2018, the first respondent police intercepted a Piaggio Auto Rickshaw (in short "the vehicle"), bearing Registration No.TN 19 AZ 0666 and recovered a huge quantity of restricted spirit that was being transported in that vehicle. Thereafter, the first respondent police registered a case in Crime No.347 of 2018 on 12.08.2018 under Sections 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, 1937 (for brevity "the TNP Act") and Sections 7 and 11 of the Tamil Nadu Rectified Spirit Rules, 2000, against Gnanamani (A1) and Kamatchi (A2) and the vehicle.

2.2 It is the case of the petitioner that Gnanamani (A1) had obtained loan from the petitioner for purchasing the vehicle and the Registration Certificate book of the vehicle bears the endorsement to that effect. Therefore, the petitioner filed CrI.M.P.No.4007 of 2019 before the Judicial Magistrate, Madurandagam, under Sections 451 and 457 Cr.P.C., which has been dismissed on 07.06.2019, on the ground that the Additional Superintendent of Police, PEW, has initiated confiscation proceedings in respect of the said vehicle. Aggrieved by the said order, the petitioner is before this Court.

3. Heard Mr.V.Shanmugham, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (CrI.Side) for the first respondent/State.

4. Mr.V.Shanmugham, learned counsel for the petitioner placed strong reliance on the two judgments of this Court viz., Vennila Vs. The State represented by the Inspector of Police, Prohibition and Enforcement Wing, Thanjavur [2016 SCC OnLine Mad 7417] and Selvam Vs. State represented by Inspector of Police, Theevatipetti Police Station, Salem District and another [2012 SCC OnLine Mad 382], wherein, this Court has directed the police to hand over the interim custody of the seized vehicle albeit the confiscation proceedings.

5. However, Mrs.P.Kritika Kamal, learned Government Advocate (CrI.Side) brought to the notice of this Court that final orders have been passed on 28.05.2019 by the Additional Superintendent of Police, PEW, confiscating the vehicle to the State.

6. The learned counsel for the petitioner contended that no notice was served on the petitioner in the confiscation proceedings.

7. This Court gave its anxious consideration to the rival submissions.

8. A Division Bench of this Court, in David Vs. Shakthivel [2010 (1) MLJ (Cri) 929], has given clear guidelines as to how such claims should be decided by the Court. Once the order of confiscation has been passed, the said order becomes an order in rem qua the property in question and the criminal Court will not have jurisdiction to pass orders under Section 451 Cr.P.C. The remedy to the aggrieved is under Section 14 (5) of the TNP Act, which reads as follows:

"14. Confiscation how ordered-.....

(5) 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."

In view of the above, this petition is dismissed with liberty to the petitioner to approach the jurisdictional Court of Session under Section 14 (5), *ibid*. The time spent by the petitioner from 02.07.2019 (date of filing of this petition) to the receipt of a copy of this order, shall stand excluded while computing the period of limitation, if any, for filing an appeal under Section 14 (5) of the TNP Act. A photocopy of the confiscation order has been furnished to the learned counsel for the petitioner across the bar, with which, liberty is given to him to file an appeal under Section 14 (5), *ibid*.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Judicial Magistrate,
Madurandagam.
2. Inspector of Police,
PEW-Madurandagam Police Station.

+1cc to Mr.V.Shanmugham, Advocate, S.R.No.59625

Cr1.R.C.No.633 of 2019

GMR(CO)
CS/22/07/2019