



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

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Crl.R.C(MD)No.268 of 2019
and
Crl.MP(MD)No.3964 of 2019

Additional Deputy Superintendent,
PEW Wing,
Pudukkottai District.

: Revision Petitioner/
Respondent/Complainant

Vs.

M.Senthilkumar

: Respondent/Appellant/
Complainant

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, against the judgment of the Principal District and Sessions Judge, Pudukkottai, in Crl.A.No.53 of 2018, dated 28.02.2019 and set aside the same and allow the revision petition by confirming the order of confiscation passed in Na.Ka.No.95/1/18/Koo.ka.ga/ma.vi.A.Pirivu/Pudhugai/ 17.07.2018 dated 16.10.2018.

For Revision Petitioner : Mr.R.Anandharaj
Additional Public Prosecutor

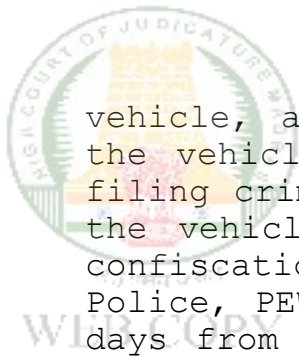
For Respondent : Mr.D.Ramesh Kumar

J U D G M E N T

This Criminal Revision is directed against the judgment of the Principal District and Sessions Judge, Pudukkottai, passed in Crl.A.No.53 of 2018, dated 28.02.2019.

2.The Prohibition Excise Wing, Pudukkottai under the head of Additional Superintendent of Police, Keeranur and the Deputy Superintendent of Police, Keeranur conducted raid on 11.07.2018 on Pudukkottai-Trichy National Highways Road near Kalamavur and at that time, they intercepted a TOYOTA Fortuner Car TN-55-AK-9000 and found foreign liquors inside the vehicle without valid permit and in this connection, a case in Crime No.517 of 2018 stands registered for the offence under Section 4(1)(a) of TNP Act against one Nagaranan and Saravanan.

3.The respondent herein being the owner of the alleged



vehicle, approached the concerned Magistrate court for release of the vehicle and on dismissal, he approached this court by way of filing criminal revision in Crl.RC(MD)No.481 of 2018 for release of the vehicle. However, this court considering the pendency of the confiscation proceedings, directed the Additional Superintendent of Police, PEW Wing, Pudukkottai, to complete the proceedings within 7 days from the date of receipt of the explanation. The respondent herein submitted his explanation on 10.10.2018, wherein it is stated that he was working in Singapore and on the date of the occurrence, he was returning from Singapore to Tiruchirappalli Airport and his family members engaged one acting driver namely Nagarajan, who is the second accused to pick up him from the Airport. While the acting driver was proceeding towards the Airport, the first accused, who is the friend of Nagarajan got into the Car along with 4 small boxes for dropping him at Trichy. The petitioner initiated confiscation proceedings against the respondent, dated 17.07.2018. Against which, the respondent preferred an appeal before the Principal District and Sessions Judge, Pudukkottai, in Crl.A No.53 of 2018. The learned Judge allowed the appeal on 28.02.2019. Aggrieved by the said order, the petitioner is before this court.

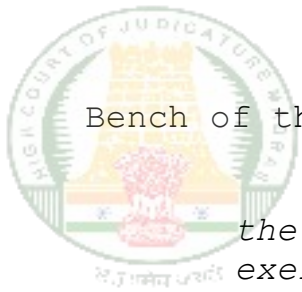
4.Heard both sides and perused the materials available on record.

5.It is seen from the records that the petitioner along with his team conducted raid on 11.07.2018 in Pudukkottai to Trichy National Highways Road near Kalamvur and at that time, a Car Toyota Fortuner TN-55-AK-9000 was driven by one Nagarajan along with one Saravanan and when they intercepted the Car, they found 52 bottles of foreign liquor along with cigarette pockets. The petitioner seized the bottles under mahazar and a criminal case was registered in Crime No.571 of 2018 under section 4(1)(a) of TNP Act as the vehicle was used for illegal transportation. In this case, the alleged vehicle belonged to one Senthilkumar, S/o.Muthaiah and he was put on notice before issuing confiscation proceedings.

6.It is further seen that after receipt of the notice, the owner of the alleged vehicle gave rely stating that the Car was driven by the acting driver Nagarajan. Since, the reason given by the owner of the vehicle was not sufficient, the petitioner rejected his claim for return of the vehicle.

7.It is also seen that the vehicle of the respondent is involved in offences under the Tamil Nadu Prohibition Act. Under the said Act, the authorities have got the power to confiscate the vehicle under Section 14(4) of the Tamil Nadu Prohibition Act, 1937.

8.At this juncture, it is pertinent to refer the decision of this court reported in **2010(1)LW (Crl.) 129 (David Vs. Shakthivel, Inspector of Police-cu,-Station House Officer)**, wherein a Division



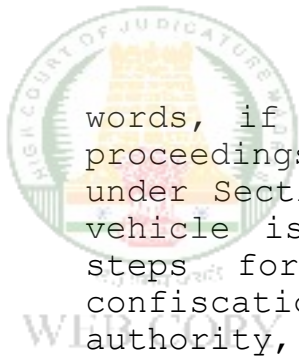
Bench of this court has given the following guidelines:-

"Whenever seizure of properties involved in the commission of offence under Prohibition Act, exercise of power is not automatic. Court should afford sufficient opportunity to the prosecution to inform the court about the steps taken by the investigating Agency. Keeping in view of the spirit of section 14(4) of TNP Act, court on its own should ascertain whether any confiscation proceedings has been initiated and the stage of confiscation proceedings."

"After affording sufficient opportunity to the prosecution and only after ascertaining about the steps taken for initiation of confiscation proceedings, court could exercise its discretion u/s.451, 457 Cr.P.C. Court could judiciously exercise its discretion with due care and caution keeping in view of spirit of section 14(4) of TNP Act. Exercise of discretion under sections 451 or 457 Cr.P.C, is only after affording sufficient opportunity of the prosecution to get instructions. Subordinate Courts are directed to insist the Assistant Public Prosecutor to file written Memo as to the steps taken under section 14(4) of TNP Act or otherwise could only on receipt of written memo, court could proceed to exercise its power u/s.451 or 457 Cr.P.C."

"In case if the court orders interim custody of vehicle, the order should be speaking order recording reasons to order interim custody of the vehicle. In case if the Court orders interim custody of the vehicle, Court should obtain necessary undertaking from the owner of the vehicle to produce the vehicle as and when directed and send copy of undertaking to the District Collector/Prohibition Officer in-charge of the District or other authorised officer in that behalf by the Government along with copy of the order passed by this court."

9.From the reading of the above guidelines, the Division Bench has clearly stated that before passing an order under Section 451 or 457 of the Code of Criminal Procedure, the Magistrate should ascertain whether confiscation proceedings have been initiated and the stage of confiscation proceedings. The Division Bench has further stated that opportunity must be afforded to the prosecution and only after ascertaining about the steps taken for initiation of confiscation proceedings, Court can exercise its discretion under Section 451 or 457 of the Code of Criminal Procedure. In other



words, if no steps have been taken for initiation of confiscation proceedings, then, it is open to the Court to exercise the powers under Section 451 or 457 of the Code of Criminal Procedure. After a vehicle is seized, the Investigating Agency should have to take steps for initiation of confiscation proceedings. If once confiscation proceedings have been initiated by the appropriate authority, the Court may not have the power to exercise powers under Section 451 or 457 of the Code of Criminal Procedure. Thus the power of the Court to pass orders under Section 451 or 457 of the Code of Criminal Procedure will arise only during the stage when steps are not being taken for initiation of confiscation proceedings.

10.It is pertinent to note here that as per section 14(4) TNP Act, the concerned authority can pass confiscation order, if he satisfied that an offence has been committed against the Act. In the instant case on hand, the petitioner has passed the order after satisfying that offence has been committed and the vehicle was involved in the offence.

11.It is to be noted that the respondent has passed the confiscation order, after affording opportunity of hearing and after putting the respondent on notice. Further, in this case, the involvement of the vehicle in the alleged commission of offence is admitted. Hence, the innocence of the owner of the vehicle could be established only after the full-fledged trial. But the learned Principal District and Sessions Judge, Pudukkottai, without considering the above aspects, has set aside the order passed by the petitioner, which according to this court, is not correct.

12.For all the reasons stated above, this court is of the considered view that the judgment passed by the Principal District and Sessions Judge, Pudukkottai, in Crl.A.No.53 of 2018, dated 28.02.2019 is liable to be set aside and accordingly, it is set aside.

13.In the result, this criminal revision is allowed. The judgement passed by the Principal District and Sessions Judge, Pudukkottai, in Crl.A.No.53 of 2018, dated 28.02.2019 is set aside and order passed by the petitioner, dated 17.07.2018 and 16.10.2018 is restored. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To,

1.The Principal District and Sessions Juge,
Pudukottai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.RAMESHKUMAR, Advocate (SR-75804[F] dated
17/07/2019)

Judgment made in
CrI.R.C (MD) No.268 of 2019
17.07.2019

JMN(05.12.2019) 5P : 4C