

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.10328 of 2020

R.Rajkumar M/A 45 Years,
S/o.Rangasamy,
No.1/87, Kangeyampalayam,
Sulur, Coimbatore Taluk,
Coimbatore District. Petitioner

Versus

- 1.The Additional District Superintendent of Police,
Crimes against women and children,
Coimbatore District,
Prohibition officer under TNP Act 1937,
Coimbatore.
- 2.The Inspector of Police,
Sulur Police Station,
Coimbatore District.
(Crime No.810/2020) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the first respondent in C.No.18/ADSP/CWC/Veh.Con/CBE/2020 dated 27.06.2020 and quash the same and consequently directing the respondents to release the Ashok Leyland tanker Lorry Bearing Registration No.TN-23-AS-0752, Engine No.CPH446208, Chasis No.CPE612735.

For Petitioner : Mr.C.P.Palanichamy

For Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

This petition has been filed, challenging the order passed by the 1st respondent dated 27.06.2020 in Crime No.810 of 2020 and consequently directing the respondents to release Ashok Leyland tanker lorry bearing Registration No.TN-23-AS-0752.

2.The learned counsel appearing for the petitioner submitted that the petitioner is the owner of the tanker lorry bearing Registration No.TN-23-AS-0752, the 2nd respondent

registered the FIR in Crime No.810 of 2020 against the petitioner and another for the offences punishable under Sections 188, 270 IPC r/w Section 4(1)(a) of Tamil Nadu Prohibition Act (Transport). The 2nd respondent registered the case with the allegation that the accused were in possession of 96 Brandy bottles of 180 ml each below the cleaner's seat during the COVID-19 Pandemic circumstances to sell the same for higher prices. He further submitted that the petitioner must be given an opportunity of hearing before passing the confiscation order as provided under Section 14(4) of Tamil Nadu Prohibition Act. He also raised another ground that the petitioner being the owner of the vehicle seized, he shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of the vehicle. It is contended that the 1st respondent did not give any opportunity for the petitioner to pay the market value of the vehicle before passing the confiscation order.

3.Per Contra, the learned Additional Public Prosecutor submitted that all the procedures were followed by the 1st respondent and only thereafter the confiscation order was passed thereby confiscated the vehicle bearing Registration No.TN-23-AS-0752 which was involved in Crime No.810 of 2020 for the offence under Sections 188, 270 IPC r/w Section 4(1) (a) of TNP Act (Transport) on the allegation that the accused persons have transported 96 bottles of Brandy containing 180 ml each to sell for higher prices during the COVID-19 Pandemic circumstances. There are two accused in this petition, the 1st petitioner is arrayed as 1st accused and the driver of the vehicle is arrayed as 2nd accused.

4.Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondents.

5.The only grounds raised by the petitioner on two fold, viz., i) before passing confiscation order, a reasonable opportunity of being heard was not given to the petitioner and ii) that the petitioner shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of the vehicle, however, the 2nd respondent has not extended such option to the petitioner.

6. On perusal of the impugned order of confiscation, the 1st respondent issued show cause notice on 28.05.2020 thereby calling upon the petitioner to submit its explanation within the period of 14 days. On receipt of the same, the petitioner submitted his explanation and it was not satisfied and as such the 1st respondent passed impugned confiscation order. Therefore, firstly, admittedly, the petitioner was not given opportunity of hearing before passing the order. Secondly, on perusal of impugned confiscation order, the petitioner was not given an an option to pay, in lieu of its confiscation, an amount not exceeding the market price of the vehicle, i.e. Ashok Leyland tanker lorry bearing Registration

No.TN-23-AS-0752. Therefore, this Court is of the view that on both these grounds, the impugned order cannot be sustained and it is liable to be quashed. Accordingly the impugned order in C.No.18/ADSP/CWC/Veh.Con/CBE/2020 dated 27.06.2020 is hereby set aside. However, the 1st respondent is at liberty to issue fresh show cause notice and follow the procedures laid down in the Tamil Nadu Prohibition Act and pass fresh orders.

7.With the above, this petition is allowed. No cost.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District Superintendent of Police,
Crimes against women and children,
Coimbatore District,
Prohibition officer under TNP Act 1937,
Coimbatore.
- 2.The Inspector of Police,
Sulur Police Station,
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