



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.07.2020
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD)No.2679 of 2020 and
WMP (MD) Nos.2302 & 2304 of 2020

Sathiah

S/o Karuppaiyah,
No.34N, Seenangudi,
Pichankurichi,
Thiruvadarai Taluk,
Ramnad District.

: Petitioner

Vs.

1. The State of Tamil nadu
Represented by the Commissioner & Secretary,
Prohibition and Excise Department,
Fort, St.George,
Chennai -9.
2. The Additional Superintendent of Police,
Office of the District Superintendent of Police,
Prohibition Enforcement Wing,
Ramnad,
Ramnad District.
3. The Inspector of Police,
R.S.Mangalam Police Station,
Ramnad District.
(Crime No.231/2019)

: Respondents

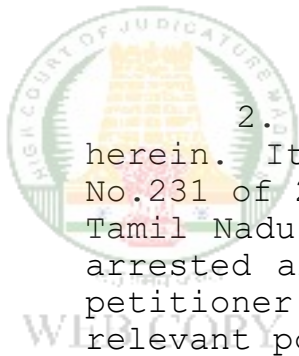
PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from proceeding with any auction and /or confiscation proceedings in respect of the vehicle bearing Reg.No. TN 50 X 3232 (Toyota Innova) involved in Crime No.231 of 2019, on the file of the Respondent No.3 and to produce the said vehicle before the Judicial Magistrate Court, Thiruvadanai.

For Petitioner : Mr.V.Kannan

For Respondents : Mr.M.Rajarajan
Government Advocate

O R D E R

Heard the learned counsel on either side.



2. The petition mentioned vehicle belongs to the petitioner herein. It appears that the said vehicle was involved in Crime No.231 of 2019, registered on the file of the third respondent under Tamil Nadu Prohibition Act, 1937. The petitioner's son Karthick was arrested and he was found in possession of 384 Brandy Bottles. The petitioner's son was said to have driven the said vehicle at the relevant point of time. The grievance of the petitioner is that the vehicle in question has not been produced before the Judicial Magistrate till date. His further apprehension is that even without complying the necessary procedures, the second respondent is likely to auction the vehicle, which necessitated the petitioner to file the present Writ Petition.

3. The learned counsel for the petitioner placed reliance on the order dated 06.06.2019 made in Crl.O.P.No.11945 of 2019, wherein the learned judge has observed as follows:-

11. *The provisions of Section 49A of the Tamil Nadu Forest Act does not in any way take away the jurisdiction of the Magistrate Court to exercise its power under Section 451 or 457 of Cr.P.C. The confiscation of a vehicle involved in the commission of an offence under the Tamil Nadu Forest Act is not only punitive in nature but also a deterrent. When a vehicle is involved in the commission of offence under the Tamil Nadu Forest Act and there are prima facie materials to show that the owner of the vehicle did not have any knowledge or connivance in the commission of the offence, he can always file an application for return of vehicle under Section 451 or 457 of Cr.P.C. But, however the Court while exercising its powers will have to do it with care and caution and should provide an opportunity to the Public Prosecutor and also must keep in mind the spirit behind Section 49A of the Tamil Nadu Forest Act, 1882 and its benevolent object.*
12. *Even though, the Judgment cited by the learned counsel for the petitioner deals with the case under the Tamil Nadu Prohibition Act, the ratio in the said Judgment can be applied even in a case where confiscation proceedings have been initiated under the Tamil Nadu Forest Act.*
13. *In view of the above, the reason given by the Court below for returning the petition filed by the petitioner is unsustainable and the same is hereby set aside. The Court below is directed to consider the petition afresh by keeping in mind the judgment of the Hon'ble 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 month from the date of a receipt of copy of this order.*



4. The learned Government counsel wanted to rely upon G.O.Ms.No.39 dated 22.10.2019, Home, Prohibition and Excise (VIII) Department, to sustain his contention that the second respondent can very well auction the vehicle in question. But the said Government order will come into play after the confiscation is done under Section 14 of Tamil Nadu Prohibition Act 1937. In this case, there is nothing on record to show the fulfillment of formalities set out in Section 14(4) of the Tamil Nadu Prohibition Act. Therefore, the question of auctioning the vehicle even without formal confiscation does not arise at all. Also, it does not mean that the vehicle involved in criminal case should not be produced before the Jurisdictional Court. In fact, the provisions of Criminal Procedure Code envisage that the seized vehicle should be produced before the Jurisdictional Court and the party concerned can avail the right to claim the vehicle by way of interim or final custody.

5. Therefore, I direct the respondents to produce the vehicle in question before the jurisdictional criminal Court without any further delay. Upon such production, it is open to the petitioner to apply for return under Section 451 of Cr.P.C. Of course, the authorities at liberty to take action to confiscate the vehicle as per law.

6. In the above terms, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The Commissioner & Secretary,
Government of Tamil nadu
Prohibition and Excise Department,
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Chennai -9.
2. The Additional Superintendent of Police,
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CS (14.07.2020) 4P 4C