



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

CrI.O.P.[MD]No.7056 of 2020

Sanjai Gandhi @ Karthik

... Petitioner

Vs.

The State rep., by
the Special Sub Inspector of Police,
PEW, Ramanathapuram Police Station,
Ramanathapuram.
(Crime No.382/2020)

... Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the learned Judicial Magistrate No.1, Ramanathapuram to entertain the petition filed by the petitioner under Section 457 and 451 of Cr.P.C., and direct to pass appropriate order within the time stipulated by this Court.

For Petitioner : Mr.R.R.Thamothar Raj

For Respondent : Mr.S.Chandrasekar

Additional Public Prosecutor

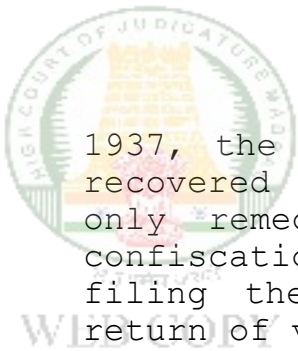
ORDER

This Criminal Original Petition has been filed seeking direction to the learned Judicial Magistrate No.1, Ramanathapuram to entertain the petition filed by the petitioner under Sections 457 and 451 of Cr.P.C which was returned on 19.06.2020.

2.The learned counsel for the petitioner would submit that the respondent police herein *suo motu* registered a case on 01.05.2020 in Crime No.382 of 2020 as against this petitioner and one Kaleeswaran for the alleged offences under Sections 4(1)(a), 4(1)(b), 4(1)(f), 4(1)(I) and 4(1)(1-A) of the Tamil Nadu Prohibition Act and Section 1 of the Transport Act. During the time of investigation, the vehicles viz., Maruthi Alto 800 bearing Registration No.TN65 AU 2283 and PULSAR 150 bearing Registration No.TN65 V 2580 were recovered by the respondent police. After recovery, the respondent police has not produced the said vehicles before the jurisdictional Magistrate and thereby, the petitioner has approached the Judicial Magistrate No.1, Ramanathapuram which is having jurisdiction to entertain the petition. After receiving the petition, the learned Judicial Magistrate No.1, Ramanathapuram, returned the same after raising query as how the petition was maintainable, since the property recovered by the police was already confiscated to the State. In the said circumstances, appropriate direction is necessary to the Judicial Magistrate No.1, Ramanathapuram for get back the vehicle from the custody of the police.

3.The learned Additional Public Prosecutor made a submission that according to Section 14(4) of the Tamil Nadu Prohibition Act,

<https://hcservices.ecourts.gov.in/hcservices/>



1937, the respondent police is having the power to confiscate the recovered property to the State. In the said circumstances, the only remedy available to the petitioner is to challenge the confiscation order passed by the Authorised Officer and not to filing the application before the Jurisdictional Magistrate for return of vehicle.

4. Now considering the rival submissions made by either side, it is not in dispute that according to the submission made by the learned Additional Public Prosecutor, the property recovered by the respondent police was confiscated to the State on 14.04.2020. In this occasion, it is necessary to see Sections 14(4) and 14(5) of the Tamil Nadu Prohibition Act, 1937, which reads as follows:-

14 (4). Notwithstanding anything contained in sub-Sections (1) to (3), the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given-

(i) a notice in writing information him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle;

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter;

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.

14 (5). Any person aggrieved by an order of confiscation under such Section (4) may, within one month from the date of receipt of such order, appeal to the Court of session having jurisdiction.

5. From reading of the above Section, it is made clear that before confiscation, the Confiscation Officer must give prior notice to the owner of the vehicles and only after getting explanation form



the concerned party, he has to order for confiscation.

6.The learned counsel appearing for the petitioner would submit that no intimation was given by the respondent police and thereby, the petitioner is not in a position to give his explanation.

7.Hence, considering the facts and circumstances of this case, this Court feels that it would appropriate to give the following directions to settle the grievance redressed by the petitioner. The respondent police has to serve notice to the petitioner within a period of one week from the date of receipt of a copy of this order. Thereafter, within a period of 14 days, the petitioner has to submit his explanation to the Authorised Officer. Thereafter, the Authorised Officer has to pass necessary order forthwith on merits. If the order passed by the Authorised Officer is against the petitioner, the petitioner is at liberty to follow Section 14(5) of the Tamilnadu Prohibition Act, 1937.

8.This Criminal Original Petition is disposed of accordingly.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi

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 Judicial Magistrate No.I,
Ramanathapuram.

2.The Special Sub Inspector of Police,
PEW, Ramanathapuram Police Station,
Ramanathapuram.

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

CrI.O.P.[MD]No.7056 of 2020
08.07.2020

SMA/16/07/2020/3P/4C