



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD)No.7551 of 2020

Guruvathai

... Petitioner

Vs

1.The Additional Superintendent of Police,
Prohibition,
Virudhunagar District.

2.The Inspector of Police,
Soolakarai Police Station,
Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to release the Yamaha Fachino two wheeler bearing Registration No.TN-67-BE-4101 seized in connection with Crime No.326 of 2019 on the file of the 3rd respondent based on the petitioner's representation dated 11.03.2020.

For Petitioner : Mr.G.Sivaraja

For Respondents : Mrs.S.Srimathy,
Special Government Pleader

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2.The petition mentioned vehicle was seized in connection with Crime No.326 of 2019 registered on the file of the second respondent for the offence under Section 4(1)(a) of Tamil Nadu Prohibition Act. It is a two wheeler. It is not in dispute that till now no confiscation order under Section 14 of the Tamil Nadu Prohibition Act has been passed. It is also not in dispute that the vehicle has not been produced before the jurisdictional Criminal Court.

3.In similar circumstances, this Court vide order dated 09.07.2020 in W.P.(MD)No.2679 of 2020 (Sathiah v. The State of Tamil nadu and Others) has passed the following order:-

"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 CrI.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



setaside. The Court below is directed to consider the petitioner 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 are at liberty to take action to confiscate the vehicle as per law.

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

4. The petitioner's counsel on instructions gives an undertaking that the petitioner will not alienate the petition mentioned vehicle till the confiscation proceedings are over. He also gives a further undertaking that the petitioner will also produce the vehicle as and when the respondents call for the vehicle for enquiry and cooperate with the enquiry to be conducted by the respondents.

5. I make it clear that it is very much open to the respondents herein to initiate and conclude the confiscation proceedings. The only relief that I am granting is interim custody of the vehicle. I have not gone into the merits of the matter.



6. Subject to these conditions, the writ petition is allowed.
No costs.

Sd/-

Assistant Registrar (Crl.Side)

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/ /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 Additional Superintendent of Police,
Prohibition,
Virudhunagar District.
2. The Inspector of Police,
Soolakarai Police Station,
Virudhunagar District.

W.P. (MD)No.7551 of 2020

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AP(14/07/2020) 4P 3C