



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2020

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WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.10298 of 2020

S.Mayleethan

... Petitioner

Vs.

1.The Superintendent of Police,
Dindigul District,
Dindigul.

2.The Deputy Superintendent of Police,
Prohibition and Excise Wing,
Dindigul.

3.The Sub Inspector of Police,
Thandigudi Police Station,
Dindigul District.

4.Ramesh Raja
Sub Inspector of Police,
Thandigudi Police Station,
Dindigul District.

5.Balamurugan
Head Constable,
Thandigudi Police Station,
Dindigul District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to release the petitioner's vehicle bearing Reg.No.TN 64 E 4960 TOYOTO ETIOS LIVA on the basis of his representation dated 18.08.2020 sent to the first respondent and other higher officials.

For Petitioner : Mr.V.Thirumal

For Respondents : Mr.M.Rajarajan
Additional Government Pleader

ORDER

Heard the learned counsel on either side. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

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2.The petitioner seeks release of the petition mentioned vehicle. The petitioner is the owner of the Car. He had let out the vehicle on hire. It appears that the person who had taken the vehicle on hire, had also carried some liquor bottles. Hence, the criminal cases were registered against them.

3.But it is not in doubt that the petitioner is not an accused in this case. The vehicle in question has not been produced before the Criminal Court. Confiscation proceedings are yet to be initiated.

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 set aside. 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 this order will not have any bearing on the confiscation proceedings that may be initiated in future. The petitioner's rights are also left open. The only relief that I am granting is interim custody of the vehicle. I have not gone into the merits of the matter.

6. Therefore, the respondents are directed to release the said vehicle subject to the following conditions:-

- a) *The petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed.*
- b) *The petitioner shall produce photocopy of the documents pertaining to the ownership of the seized vehicle.*
- c) *As and when the respondents call for the vehicle for enquiry, the petitioner has to produce the vehicle in question and he shall cooperate with the enquiry to be conducted by the respondents.*

7. The petitioner's counsel states that the financial assistance has been availed on the strength of the RC Book. The original RC book is not with the petitioner.

8. Upon completion of these formalities, the respondents shall release the vehicle forthwith without any delay based on the production of the photocopy of the RC Book. If this undertaking given by the petitioner is breached, the petitioner will not be entitled to interim release of the vehicle in future. The Writ Petition is allowed accordingly. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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.

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To:

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- 5.Balamurugan
Head Constable,
Thandigudi Police Station,
Dindigul District.

+1 CC to M/s.V. THIRUMAL, Advocate (SR-15332[F] dated 31/08/2020)

+1 CC to M/s.Special Govt.Pleader (SR-15533[F] dated 01/09/2020)

W.P. (MD)No.10298 of 2020

28.08.2020

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