



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.RC(MD)No.37 of 2016

and Crl.M.P.(MD)No.860 of 2016

and

Crl.O.P(MD)No.8151 of 2014

and M.P.(MD)Nos.1 and 2 of 2014

CRL.RC(MD)No.37 of 2016:

K.Bose : Petitioner

Vs.

State through the Inspector of Police,
Melavalavu Police Station,
Melur, Madurai District.
Crime No.104 of 2014.

: Respondent

PRAYER : Criminal Revision is filed under Section 397 and 401 Cr.P.C, to set aside the order passed by the learned Principal Sessions Judge, Madurai in C.A.No.24 of 2014, dated 03.09.2015 and confirming the confiscation order passed by the Additional Deputy Superintendent of Police, P.E.W. Madurai, dated 24.05.2014 wide Na.Ka.No.180-2/A.D.S.P/P.E.W/M.D/2014 and to return the Eicher Mini Lorry Vehicle bearing registration No. TN 59 AS 0693 to this revision petitioner.

For Petitioner	: Mr.J.William Christopher
For Respondent	: Mr.A.Robinson, Government Advocate(Criminal Side)

Cr1.O.P(MD)No.8151 of 2014:

K.Moovendra Selvan ... Petitioner/Accused No.3

Vs.

1.The Inspector of Police,
Melavalavu Police Station,
Melavalavu, Melur Taluk,
Madurai District. ... Respondent/Complainant
Crime No.104 of 2014

2.Kaja Mohideen .. 2nd Respondent/1st Informant/Defacto
Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records of the case in Crime No.104 of 2014 on the file of the first respondent police and quash the same.



For Petitioner

: Mr.A.Raja Mohammed

For R1

: Mr.A.Robinson,
Government Advocate(Criminal Side)

WEB COPY

COMMON ORDER

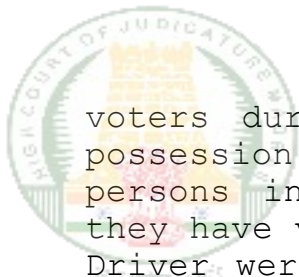
The petitioner in criminal revision case is the owner of the Eacher Mini Lorry bearing Registration No. TN 59 AS 0693, which has been seized by the Inspector of Police, Melavalavu Police Station, in connection with Crime No.104 of 2014 for the offence under Section 4(1) (a) Tamil Nadu Prohibition Act (Transport) and 171 (H), 171 (I) IPC.

2.The said vehicle has been confiscated by the Additional Superintendent of Police as per Section 14 (a) of Tamil Nadu Prohibition Act on 24.05.2014 and the appeal filed by the petitioner before the learned Principal Sessions Court, Madurai in C.A.No.24 of 2014, was dismissed by judgment dated 03.09.2015. Aggrieved over the same, the owner of the vehicle/petitioner herein preferred the above criminal revision case.

3.The Petition in Crl.O.P.(MD) No.8151 of 2014 is filed by one Moovendra Selvan[A3] in the afore said Crime No.104 of 2014 on the file of the Inspector Police, Melavalavu Police Station, Madurai, for quashing the said proceedings pending against him.

4.Since both the Criminal Revision case and Criminal Original Petition are arising out of Crime No.104 of 2014 on the file of the respondent police, the Honourable Administrative Judge of this Bench by order dated 28.03.2016 posted the Criminal Original Petition along with this Criminal Revision case. Accordingly, both these petitions are taken up together and disposed of by this common order.

5.The facts of the case in Crime No.104 of 2014 are that on 19.04.2014 at about 10.00.pm, one Kajamohiden/defacto complainant in the Criminal Original Petition noticed that a huge number of liquor bottles were unloaded from the vehicle namely, Eicher Lorry bearing Registration No.TN 59 As 0693, at the house of Thennarasi[Accused No.1.] The defacto complainant went there and enquired them, at that time, the Driver of the vehicle namely, Mayilsamy informed that based on the instructions given by the petition/Supervisor of TASMACH shop Arugampatti, they were unloading the liquor bottles. Immediately the defacto complainant called his village people, who were available in the near by place. On seeing them, the two persons, who were unloading the bottles and one Thennarasi fled away. Further on enquiry, the Driver Mayilsamy informed that the liquor bottles were unloaded for the purpose of distributing to the



voters during the upcoming election. On search, he was found in possession of 250 brandy bottles of 180 ml each. Since the accused persons indulged in illegal transportation of liquor bottles and they have violated the Election code of conduct, the vehicle and the Driver were taken to the police station along with liquor bottles. On the complaint of Kajamohideen, the present case came to be registered against five persons in Cr.No.104 of 2014 for the offence under Section 4 (1) (a) of Tamil Nadu Prohibition Act and under Section 171 (H), 171 (1) of IPC against five accused.

6.Since the offending vehicle was involved in the offence under the provision of the Tamil Nadu Prohibition Act, in order to initiate confiscation proceedings, on 02.05.2014, the then Sub Inspector of Police made a request to the Additional Deputy Superintendent of Police, P.E.W., Madurai. On receipt of the said request, as per Section 14(4) of the Tamil Nadu Prohibition Act, the Additional Deputy Superintendent of Police, P.E.W., Madurai has initiated confiscation proceedings against the offending vehicle. The petitioner in criminal revision case, namely, Bose is the owner of the offending vehicle and a show cause notice was issued to him on 07.05.2014, seeking his explanation as to why the vehicle shall not be confiscated. The same was received by the petitioner on 08.05.2014 and the petitioner has also submitted his objection. In the meantime, the petitioner also filed a writ petition before this Court in W.P.(MD)No.8318 of 2014 seeking release of the vehicle by considering his representation. However, he withdrew the writ petition on 03.03.2015.

7.After considering the objection of the petitioner, the competent Authority/Additional Deputy Superintendent of Police, P.E.W., Madurai, proceeded further and passed the final order vide his proceedings Na.Ka.No.108-2/Koo.Ka.Ka./Ma.Vee.A.P./Ma.Maa/2014 dated 24.05.2014, whereby the petitioner vehicle bearing registration number TN-59-AS-0693 was confiscated and the same was duly communicated to the petitioner. Subsequently, on 20.06.2014, the competent Authority/Additional Deputy Superintendent of Police, Madurai by his communication to the petitioner has also stated that the petitioner being the owner of the vehicle would be given an option to retrieve his vehicle by paying the amount determined by the authority amounting to Rs.2,00,375/- including taxes and if he failed to pay, the vehicle would be sold through public auction. However, the petitioner had not responded to the communication and failed to avail the opportunity. Instead the revision petitioner moved an application before the learned Judicial Magistrate, Melur under Section 451 r/w 457 of Cr.P.C seeking release of his vehicle in Cr.M.P.No.2179 of 2014 dated 02.07.2014.

8.In the meantime, the competent authority/Additional Superintendent of Police, Madurai by his proceedings in Na.Ka.No.108-2/Koo.Ka.Ka./Ma.Vee.A.P./Ma.Maa/2014 dated 24.05.2014



bearing Registration No. TN 59 AS 0693. By proceeding dated 26.06.2014, the petitioner was also provided an opportunity to retrieve his vehicle by paying Rs.2,00,375/- the value of the vehicle determined by the competent authority/Additional Superintendent of Police. The learned Principal Sessions Judge, Madurai by his order dated 03.09.2015 dismissed the Criminal Appeal No.24 of 2015. As against the same, the present revision petition is filed.

9.Heard Mr.A.Raja Mohammed, learned counsel for the petitioner in Crl.O.P.(MD)No.8151 of 2014 and Mr.J.William Christopher, learned counsel for the petitioner in Crl.R.C.(MD)No.37 of 2016 and Mr.A.Robinson, learned Government Advocate (Criminal Side) appearing for the State in the both cases.

10.The petitioner's vehicle Eicher Mini Lorry bearing Registration No.TN 59 AS 0693 seized by the respondent police in connection with Crime No.104 of 2014 on 19.04.2014, with the allegation that this vehicle was used to transport liquor bottles illegally for the purpose of distributing to the voters during the election period. 250 Brandy bottles (180 ml each)) were also recovered from the petitioner vehicle.

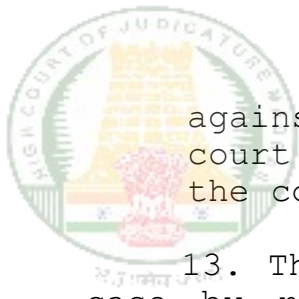
11.Admittedly, Bose, the petitioner in the revision case is the owner of the vehicle. The vehicle has been confiscated as per Section 14 (4) of the Tamil Nadu Prohibition Act on 24.05.2014 and further communication was also made on 20.06.2014 providing an opportunity to the petitioner to retrieve his vehicle by paying the market value of the vehicle. It would be apposite to refer to Sub Section 4 of Section 14 of Tamil Nadu Prohibition Act, which reads as follows:

"(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."

12.Though the revision petitioner, owner of the vehicle has not been arrayed as an accused in Crime No.104 of 2014, a deemed provision is available under Section 14 A of Tamil Nadu Prohibition Act, which reads as follows:

"14A. Owner of animal, vessel, cart or other vehicle deemed to be guilty in certain cases. - Where any animal, vessel, cart or other vehicle is used in the commission of any offence under this Act and is liable to confiscation, the owner thereof shall be deemed to be guilty of such

https://hcservices.com/filing/hcservices/ such owner shall be liable to be proceeded



against and punished accordingly unless he satisfies the court that he had exercised due care in the prevention of the commission of such an offence."

13. The learned counsel for the revision petitioner made out a case by referring the order of the learned Judicial Magistrate, Melur in Cr.M.P.No.2179 of 2014, dated 02.07.2014 and his memo dated 01.08.2014 and also by relying that he was not added an accused in Crime No.104 of 2014.

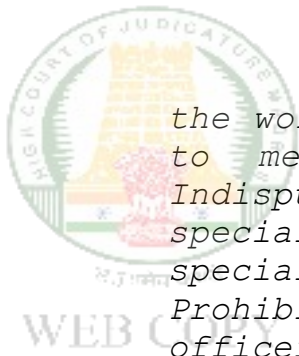
14. On the other hand, the learned Government Advocate (Criminal Side) submits that though revision petitioner is not added as an accused, as per Section 14 (A) of Tamil Nadu Prohibition Act, he is deemed to be guilty and despite the same, Section 14 (4) contemplates the competent authority to confiscate the vehicle involved in the prohibition offence and accordingly, the competent authority issued a show cause notice in Na.Ka.No.180-1/A.D.S.P/P.E.W/MDU/ 2014, dated 07.05.2014. He further submitted that this revision petitioner received the same on 08.05.2014 and also moved a writ petition before this Court in W.P.(MD)No.8318 of 2014 for release of his vehicle by considering the representation, but the same was dismissed as withdrawn on 03.03.2015. The order of confiscation was also passed by the competent authority on 24.05.2014 and an opportunity to retrieve his vehicle was also provided on 26.06.2014.

15.By suppressing all these facts, the revision petitioner moved the application before the learned Judicial Magistrate, Melur in Cr.M.P.No.2179 of 2014 under Section 451 r/w 457 of Cr.P.C and the respondent police has also filed their objection citing this facts. Despite, the learned Judicial Magistrate, Melur passed the order in Cr.M.P.No.2179 of 2014 on 02.07.2014.

16.By suppressing all these facts, the revision petitioner filed the criminal appeal before the Principal Sessions Court in C.A.No.24 of 2014 and the learned Principal Sessions Judge passed an order on 03.09.2015 and there is no reason to interfere with the orders of the learned Principal Sessions Judge.

17.In respect of his contention the learned Government Advocate (Criminal Side) has also relied upon the order of this Court in the case of Olimohammed Vs. State reported in 2016 CrIj 1361, wherein this Court has held as follows:

"54. Comparative reading of the provisions in the Code and the Tamil Nadu Prohibition Act, 1937, regarding the disposal of the property, which includes confiscation, makes it clear that the Code of Criminal Procedure, is not exhaustive, but recognises the special enactments, and in the case on hand, the Tamil Nadu Prohibition Act, 1937. The term Special Jurisdiction is not defined in the Code, but



the words Special Laws are defined in the Indian Penal Code to mean a law applicable to a particular subject. Indisputably, the Tamil Nadu Prohibition Act, 1937, is a special enactment and Section 14(4) of the Act, confers special powers and jurisdiction on the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf, 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, if he is satisfied that an offence has been committed against the Act and whether or not a prosecution is instituted for such offence.

55. In the case on hand, before the lower Court, prosecution has objected to the prayer, for releasing the vehicle, on the grounds that confiscation proceedings has already been initiated by issuing a show cause notice. If the Court below is empowered to order release of the vehicle, pending inquiry or trial, under Sections 451 and 457 Cr.P.C., as the case may be, then, in the humble opinion of this Court, the power conferred on the competent authority, under Section 14(4) of the Tamil Nadu Prohibition Act, 1937, cannot be exercised and in such circumstances, provision under Section 14(4) of the Act, would become otiose, for the reason that notwithstanding the provisions, under Section 14(1) to (3) of the Act, the District Collector or the Competent Authority, under Section 14(4) of the TNP Act, is empowered to initiate proceedings for confiscation. Sub-Sections 1 and 2 of Section 14 of the Tamil Nadu Prohibition Act, 1937, confers powers on the Court to order for confiscation. Section 14 (4) of the Act, starts with an opening sentence, notwithstanding anything contained in sub-Sections 1 and 3 of Section 14 of the Act, which confers power on the Court to order for confiscation. It is to be noted that though power is conferred on the Court, to order confiscation, pending trial, the said power is not normally invoked by the Courts."

18. He also relied the order of Division Bench of this Court in the case of David Vs. Sakthivel, Inspector of Police, reported in 2010(1) LW (Cr1.) 129: 2010 (1)MLJ (Cr1.) 929 held as follows:

"25. In the instant case, Investigating Officer has issued notice to the owner of the vehicle David [petitioner] and notice could not be served upon the petitioner. It is stated that petitioner deliberately evaded service of notice. In the mean time, Petitioner filed C.M.P.No.1356/2009 in which notice was sent to the Respondent. Again on 24.07.2009, Respondent- Inspector of Police informed the Court about the steps taken for



WEB COPY

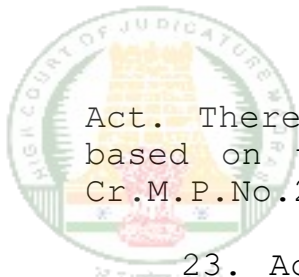
serving the notice upon the Petitioner. In spite of categorical assertion about the confiscation proceedings, Magistrate proceeded to order production of vehicle bearing registration No. TN-21-J-2952 before the Court on 30.07.2009. In our considered view, the Magistrate does not seem to have afforded sufficient opportunity to the Investigating Agency. We are of the view that the Magistrate did not keep in view the spirit of Section 14(4) of TNP Act nor exercised due care and caution before passing order for interim custody not has recorded reasons to order interim custody of the vehicle. Investigating Agency was under bonafide belief that since vehicle was produced before the Prohibition Officer in charge of the District, it was incumbent upon them to produce the vehicle before the Court. Having regard to the facts and circumstances of the case, we do not find any wilful disobedience of the order of Court dated 27.07.2009 to find the Respondent guilty of Contempt of Court and the Contempt Petition is liable to be dismissed."

19. Considering the rival submissions made, this Court deems that there is no reason to interfere with the orders of the learned Principal Sessions Judge, Madurai in C.A.No.24 of 2014, dated 03.09.2015. Though this petitioner has not been arrayed as an accused, his vehicle bearing Registration No. TN 59 AS 0693 involved in the commission of offence under Section 41(A) of the Tamil Nadu Prohibition Act and it has also been seized by the respondent police in Crime No.104 of 2014.

20. Sub Section 4 of 14 of the Tamil Nadu Prohibition Act authorises the competent authority to confiscate the vehicle involved in the commission of offence. The competent authority/Additional Superintendent of Police, Madurai has also issued a show cause notice dated 07.05.2014, which was received by the revision petitioner on 08.05.2014 and the revision petitioner has also submitted his reply to the confiscation proceedings.

21. The competent authority passed the order of confiscation on 24.05.2014 after considering his reply and also provided an option to retrieve his vehicle. There is no fault on the part of the respondent police in the process of confiscation.

22. On the other hand, the revision petitioner has approached this Court in W.P.(MD)No.8318 of 2014 seeking release of his vehicle and the same was dismissed as withdrawn on 03.03.2015. By suppressing the confiscation proceedings and the show cause notice received by him on 07.05.2014, the petitioner approached the learned Judicial Magistrate, Melur for return of vehicle under Section 451 of Cr.P.C. The learned Judicial Magistrate, Melur passed the order in Cr.M.P.No.2179 of 2014 on 02.07.2014, without considering the reply of the respondent police about the confiscation proceeding



Act. Therefore, the petitioner cannot maintain this revision case based on the order of the learned Judicial Magistrate, Melur in Cr.M.P.No.2179 of 2014, dated 02.07.2014.

23. Accordingly, the Revision case is dismissed. Consequently, connected miscellaneous petition is closed.

24. This Criminal Original Petition is filed by one Moovendra Selvan[A3] in Crime No.104 of 2014 to quash the proceeding pending against him.

25. This petitioner/Moovendra Selvan was the Supervisor of the TASMAC Shop at Arugampatti and the Driver of the vehicle, namely, Mayilsamy informed the defacto complainant that only on instructions of the Supervisor of TASMAC Shop, Arugampatti, they had unloaded the liquor bottles on the date of occurrence. Therefore, based on his statement this petitioner/Supervisor of TASMAC was also arrayed as accused.

26. In this Criminal Original Petition, the first respondent police filed a counter-affidavit with a specific stand that though the case in Crime No.104 of 2014 was registered as against five accused, after investigation, they found that there is no material as against this petitioner/ Supervisor of TASMAC, Arugampatti and as against the load man[A4 and A5]. Accordingly, they have deleted the accused Nos.3 to 5 and the prosecution is now confined as against Accused No.1[Thennarasi] and Accused No.2[Mayilsamy] for the offence punishable under Sections 171(H), 171(I) of IPC and under Section 4(1)(a) of Tamil Nadu Prohibition Act (Transport) .

27. It is also submitted that though the investigation is completed and a final report is also made ready, they did not file the same in view of the interim order of stay granted in this Criminal Original Petition.

28. In view of the specific stand taken by the respondent police that the investigation reveals that the petitioner is not an accused in Crime No.104 of 2014, this Criminal Original Petition is allowed insofar as the petitioner herein is concerned and the respondent police is directed to file a final report as against the other accused persons as expeditiously as possible, without any further delay. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (co)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Inspector of Police,
Melavalavu Police Station,
Melur, Madurai District.

2.The Judicial Magistrate No.VI,
Tiruchirappalli.

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

CRL.RC (MD) No.37 of 2016
and CrI.M.P. (MD) No.860 of 2016
and
CrI.O.P (MD) No.8151 of 2014
and M.P. (MD) Nos.1 and 2 of 2014
01.10.2020

VB (09.10.2020) 9P 4C