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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Writ Petition No.24243 of 2021

C.Senthilkumar

...Petitioner

vs

State rep. by
Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Erode District.

...Respondent

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the Respondent in Na.Ka.No.199-1/Thu.Ka.Ma.Vi/E/2021 dated 09/10/2021 and to direct the respondent to release the Eicher Lorry bearing number TN 38 BR 3250 to the Petitioner within the time stipulated.

For Petitioner :Mr.M.Saravanakumar

For Respondent :Mr.A.Damodaran,
Additional Public Prosecutor

O R D E R

This Writ Petition is filed by one viz. C.Senthilkumar, who is the owner of an Eicher lorry bearing Registration No.TN 38 BR 3250, to produce his lorry involved in Crime No.63 of 202. The lorry was seized by Thalavadi Police Officials and the same was produced before the Respondent herein.

2.The Petitioner submitted that, to augment his income, he bought an Eicher lorry bearing Registration No. TN 38 BR 3250 by availing financial assistance from a private finance company. Thereafter, he engaged a driver viz. Sannasamy and involved in the business of transporting goods. On 03.04.2021 the driver was sent to Lingusamy Mill to carry the remains of coconut bat. At



that time, the vehicle was investigated by the Thalavadi Police officials, who found that, the driver was illegally smuggling some restricted liquors viz. Bejois VSOP Brandy 1000 ml - 11 Bottles, Old Admiral VSOP Brandy 1000 ml - 19 Bottles, totally 30 bottles . Hence, the vehicle was seized under section 4(1) (a)r/w4(1-A) of the Tamil Nadu Prohibition Act (Transport), 1937 in Crime No.63 of 2021.

3. Thereafter, the Petitioner received a Show Cause Notice on 23.05.2020 informing that, the vehicle has to be confiscated under Section 14(4) of the Tamil Nadu Prohibition Act, 1937. The Petitioner sent a representation on 06.08.2021. On coming to know about the registration of the First Information Report, the Petitioner informed that, without his knowledge, the said driver Sannasamy acted on his own.

4. The learned counsel appearing for the Petitioner contended that, though the Respondent had sent the Show Cause Notice dated 08.05.2020, a reading of the same would show that, the Show Cause Notice was sent for confiscation of the vehicle and it does not disclose any knowledge of the Petitioner in the offence. Thereafter, the Respondent sent a notice of confiscating proceedings vide Na.Ka.No.199/Thu.Ka.Ka.I/E/2021 dated 22.06.2021 for auction of the vehicle. He further contended that, sub-clause (iii) to Section 14(4) of the Tamil Nadu Prohibition Act clearly states that, a reasonable opportunity of hearing has to be given. But, no such opportunity was given to the Petitioner, which is in violation of the conditions prescribed.

5. He further contended that, the Respondent passed the proceedings in Na.Ka.No.199-1/Thu.Ka.Ma.Vi/E/2021 dated 09.10.2021 by setting aside the impugned order in Na.Ka.No.199/Thu.Ka.Ka.I/E/2021 and demanded the Petitioner to pay a sum of Rs.4,60,000/- to release the vehicle. On a further reading of the First Information Report, it is seen that, the seizure of the vehicle was not intimated to the Court; dispensation of furnishing of Form 91 has been made, and on what Authority, the Police have made such recording is not known. Thus, from the above facts, it is clearly seen that, the Police with pre-conceived notion, seized the vehicle and brought the vehicle for confiscation and are now attempting to auction the vehicle, which could cause great loss of prejudice to the petitioner.

6. The learned Additional Public Prosecutor appearing for the Respondent submitted that, in this case, First



Information Report came to be registered on 03.04.2021 for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937. The vehicle was intercepted in the Lingusamy Mill and it was found that, Bejois VSOP Brandy 1000 ml - 11 bottles, Old Admiral SOP Brandy 1000 ml -19 bottles, totally 30 bottles of illegally smuggled liquors were seized from the driver of the vehicle Sannasamy. Following Section 14(4) of the Tamil Nadu Prohibition Act, 1937, the vehicle and the contra-band were seized. The recording of Form-91 and the seizure of the vehicle has been dispensed with. The Petitioner was issued with a show cause notice; proceeding in Na.Ka.No.199/Thu.Ka.Ka.I/E/2021 dated 22.06.2021 for public auction. After the issuance of the proceeding, the Petitioner sent a reply. Thereafter the proceeding in Na.Ka.No.199/Thu.Ka.Ma.Vi/E/2021 dated 09.10.2021 was passed by the Respondents herein to set aside the impugned order in Na.Ka.No.199/Thu.Ka.Ka.I/E/2021.

7.The learned Additional Public Prosecutor further submitted that, the dispensation of Form-91 is recorded in the First Information Report, for the reason that, whenever Form-91 is sent to the Court without property, the Court does not receive Form-91. In case, they receive the same, at the time of filing the charge sheet, non-production of property is recorded as non-compliance and the charge sheet is not taken on file. For this reason, Form-91 has not been recorded.

8.Considering the submissions and on a perusal of the materials, this Court is of the view that, the Petitioner is not an accused in this case. He is the owner of the vehicle. He purchased the vehicle by availing a financial assistance from a private finance company. It is also not in dispute that seizure of the vehicle vide Form-91 was not forwarded to the concerned Magistrate. The confiscation proceedings were initiated, Show Cause Notice issued and reply received. Admittedly, in this case, under Section 14(4)(iii) of the Tamil Nadu Prohibition Act, a reasonable opportunity of hearing has to be given . In this case, Petitioner was not given any opportunity of hearing, which is in violation of principles of natural justice.

9. In view of the same, this Court directs the Respondent to hear the Petitioner and thereafter, giving opportunity for personal hearing and proceed with the confiscation proceedings. In the meanwhile, the seizure of the vehicle should be intimated to the concerned Judicial Magistrate, who shall deal with the same, as per law.



10. With the above direction, this Writ petition is disposed of. No costs. Consequently, connected W.M.P.No.25557 of 2021 is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

(vm)

To

1. The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Erode District.

2. The Public Prosecutor
High Court, Madras

+1 CC to Mr.M.Saravanakumar, Advocate sr 59259.

W.P.No.24243 of 2021

GJ(CO)
SP(02/12/2021)