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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.23684 of 2021 and
W.M.P.Nos.24929 & 24931 of 2021

R.Boopathi

...Petitioner

Versus

1. The Additional Superintendent of Police,
Prohibition Enforcement Division,
Tirupur District.

2. The Inspector of Police,
Kangayam Police Station,
Kangayam, Tirupur District.

3. Velusamy

...Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India for issuance of writ of Certiorari or any other writ, order or direction in the nature of a writ, calling for the records relating to the proceedings of the 1st respondent in Na.Ka.No.326/P.Mu/Ku.Kaa.Ka/Ma.Vi/Tirupur/2021, dated 07.10.2021 and to quash the same.

For Petitioner : Mr.G.Murugendran

For Respondents : Mr.A.Damodharan,
Additional Public Prosecutor
For R1 & R2

ORDER

This Writ petition is filed challenging the impugned order in Na.Ka.No.326/P.Mu/Ku.Kaa.Ka/Ma.Vi/Tirupur/2021, dated 07.10.2021, passed by the Additional Superintendent of Police, Prohibition Enforcement Division, Tiruppur District confiscating the Ashok Leyland six wheeler lorry bearing the register No.TN 30 AL 0562.

2. The learned counsel for the petitioner submitted that the Confiscation Authority has passed an order, without considering the explanation of the petitioner dated 20.09.2021 as per the



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Section 14(4) of Tamil Nadu Prohibition Act, 1937, which is against the principles of natural justice. He further submitted that the vehicle was involved in Crime No.937 of 2021 for the offences under Section 279, 337, 4(1) (a) of the Tamil Nadu Prohibition Act, 1937. The allegation in the First Information Report is that one Velusamy, who is the driver of the petitioner, had driven the lorry and dashed against an Eicher Van, which in turn hit the motor cycle and thereby involved in a road accident. Thereafter, the said Velusamy jumped from his vehicle carrying a white gunny bag, when the respondent police, enquired him, he threw away the gunny bag, and ran away from the place. The white bag retrieved, in which 12 bottles of Old Admiral Brandy each containing one litre manufactured in Karnataka found. Hence prohibition offence included and the vehicle seized. Admittedly, the petitioner is not an accused in this case. In the confiscating proceedings, show cause notice dated 07.08.2021 was issued to the petitioner, who is the owner of the vehicle and the same was received by the petitioner on 09.09.2021. A reply dated 20.09.2021 was sent by the petitioner and the same was received by the Confiscation Authority on 21.09.2021. Thereafter, the vehicle was confiscated by the impugned order dated 07.10.2021. The petitioner is questioning the procedure followed by the Confiscation Authority. The petitioner is questioning the procedure followed by the Confiscation Authority. Hence, the present petition.

4. The learned Additional Public Prosecutor submitted that the petitioner's vehicle bearing No.TN 30 AL 0562 seized by the respondent Police. Thereafter, a show cause notice dated 07.08.2021 issued to him. The reply for the show cause notice was not satisfactory, the Confiscation Authority, after conducting proper enquiry, confiscated the vehicle. In the impugned order, it is clearly stated that the reply of the petitioner considered and thereafter only confiscating order passed. He further submitted that the only remedy available to the petitioner is that he has to file an appeal before the Court of Session as per Section 14(5) of Tamil Nadu Prohibition Act, which is reads as follows:-

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

6. The Learned counsel for the petitioner submitted that he had received the impugned order on 07.10.2021 and now, shortly 30 days gets lapsed and hence the appeal will not be entertained.



7. This Court considered the submissions made by the learned counsel for the petitioner and perused the materials on record. The points raised by the petitioner before this court is to be raised in the appeal and the petitioner cannot file a stay petition seeking stay of the impugned order which is on a misgiving. Hence, this Writ Petition is liable to be dismissed.

8. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. However, liberty is given to the petitioner to file an appeal before the Principal District and Sessions Judge, Tiruppur against the impugned order. In view of this Writ Petition, the limitation of 30 days will not be a bar to file an appeal and the appeal to be entertained. If any stay petition is filed, the same is to be considered on merits. The petitioner to file an appeal within 30 days from the date of receipt of this order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rap/mdl

To

1. The Principal District and Sessions Judge,
Tiruppur.
2. The Additional Superintendent of Police,
Prohibition Enforcement Division,
Tirupur District.
3. The Inspector of Police,
Kangayam Police Station,
Kangayam, Tirupur District.
4. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.G.Murugendran,Advocate Sr.No.57210

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EV[co]
NSK 10/11/2021