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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.24155 of 2021

C.Gomathi

.. Petitioner

/versus/

1.The State of Tamil nadu,
rep.by the Commissioner & Secretary,
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.

2.The Additional Superintendent of Police(CWC),
O/o the Additional Superintendent of Police,
No.307, Gandhi Road,
Old pet, Krishnagiri 635 001.

3.The Inspector of Police,
PEW-Hosur Police Station,
Krishnagiri District,
Crime No.412 of 2021.

..Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India praying to grant a Writ of Mandamus forbearing the respondents from proceeding with any auction and/or confiscation proceedings in respect of the vehicle bearing Registration No.TN-18-BC 3823 (Ashok Leyland make lorry) involved in Crime No.412 of 2021 on the file of the 3rd respondent and to produce the said vehicle before the Judicial Magistrate Court II, Hosur.

For Petitioner : Mr.T.Gowthaman

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

O R D E R

(This case has been heard through video conferencing)

The petitioner is the owner of a Ashok Leyland lorry bearing Reg.No.TN-18-BC-3823, filed this petition to produce her lorry involved in Crime No.412 of 2021 which is investigated by the third respondent before the Judicial Magistrate Court No.II, Hosur.



2.The contention of the petitioner is that, to augment her income, she intended to do some business, purchased a lorry bearing Reg.No.TN-18-BC 3823 availing financial assistance from Induja Finance. Thereafter, she had entrusted the vehicle for transport by engaging a driver viz. Mr.Nishanthan. The vehicle was availed by Innila Cargo Movers for goods transport. During the lockdown period, there was no much orders and the vehicle was idle. Later, as the situation improved, Innila Cargo Movers gave an order for transporting Marie Gold Biscuit from Bengaluru to Kochi. Hence, the vehicle was sent along with the driver Nishanthan on 09.06.2021 for the said order.

3.On the way back, the vehicle was checked in Jijivadi check post and it was found that, the driver Nishanthan was smuggling some Old Admiral Brandy each containing 180 ml in 192 packets. Hence, the vehicle was seized under Section 14(4) of the Tamil Nadu Prohibition (TNP)Act, 1937 in Crime No.412 of 2021. Thereafter, the petitioner received a show cause notice on 13.10.2021 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 28.10.2021. Even prior to the receipt of show cause notice, she sent a representation on 26.06.2021. On coming to know about the registration of the First Information Report, she informed that, the said driver Nishanthan acted on his own, without the knowledge of the petitioner. The petitioner is a lady entrepreneur, and to augment her income, she availed financial assistance and purchased the vehicle which is now involved in the prohibition offence.

4.Learned counsel appearing for the Petitioner submitted that though the second respondent had sent a show cause notice dated 13.10.2021, 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. He further submitted that Sub Clause (iii) to Section 14(4) of the Tamil Nadu Prohibition Act states that, a reasonable opportunity of hearing the notice has to be given. No such opportunity was given to the petitioner which is in violation of the condition prescribed, 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.

5.The learned counsel for the petitioner further relied on the decision of the Court in W.P.(MD) No.2679 of 2020 dated 09.07.2020, wherein, a similar situation, this Court has



quashed the confiscation proceedings directing the Police to produce the vehicle before the concerned Court and permitted the petitioner to make a claim over the vehicle.

6.The learned Additional Public Prosecutor appearing for the respondents submitted that, in this case First Information Report came to be registered on 09.06.2021 for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937. The vehicle was intercepted during routine road check near a check post, it was found that, 180ml of Old Admiral Brandy illegally smuggled in 192 packets were seized from the driver of the vehicle Nishanthan. 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 vehicle has been dispensed with. The petitioner was issued with a show cause notice. Even before the receipt of the show cause notice, she had sent a representation. After the show cause notice, she sent a reply, since the reply was not satisfactory. The confiscating authority, confiscated the vehicle and sent the vehicle for auction. The petitioner ought to have raised these points at the initial stage and raising such objection at this stage is not permissible.

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 the 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. She is the owner of the vehicle. She purchased the vehicle availing financial assistance from Induja Finance. It is also not in dispute that seizure of the vehicle, Form 91 not forwarded to the concerned Magistrate. The confiscation proceedings 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 to be given for hearing to be given to the notices. In this case Petitioner was not given any opportunity of hearing, which is in violation of Law of principles of natural justice.

9.In view of the same, this Court directs the second respondent/confiscating authority to hear the petitioner and thereafter, to give an opportunity for personal hearing and to proceed with the confiscation proceedings. In the mean while, the seizure of the vehicle to be intimated to the concerned Judicial Magistrate, who shall deal with the same as per the law.



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10. With the above direction, this Writ Petition is disposed of. No order as to costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

ari/vm

To

1. The Judicial Magistrate,
Hosur.
2. The Commissioner & Secretary,
The State of Tamil nadu,
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
3. The Additional Superintendent of Police (CWC),
O/o the Additional Superintendent of Police,
No.307, Gandhi Road,
Old pet, Krishnagiri 635 001.
4. The Inspector of Police,
PEW-Hosur Police Station,
Krishnagiri District,
Crime No.412 of 2021.
5. The Public Prosecutor
High Court, Madras.

+2cc to Mr.T.Gowthaman, Advocate SR.No.58904

W.P.No.24155 of 2021

NMI (CO)
GMY (25/11/2021)