



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.NO.26266 OF 2021

R.Sathish Kumar

... Petitioner

Versus

1. The Additional Superintendent of Police,
Crime against Women & Children,
Coimbatore District.

2. The Inspector of Police,
Annur Police station,
Coimbatore.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of Constitution of India to issue a writ of certiorari to call for the records pertaining to the confiscation order in C.No.67/ADSP/CWC/Veh.Con/CBE/2021, dated 09.08.2021 and final order in C.No.67/ADSP/CWC/Veh.Con/CBE/2021 dated 14.10.2021 of the first respondent herein, which was served on 14.10.2021 to the petitioner and quash the same.

For Petitioner : Mr.I.Periasamy

For Respondents : Mr.R.Vinothraja,
Government Advocate
(Crl. side)

ORDER

This Writ Petition has been filed to quash the order dated 09.08.2021 and the final order dated 14.10.2021 in C.No.67/ADSP/CWC/Veh.Con/CBE/2021 passed by the first respondent.

2. The petitioner is doing transport business in the name of M/s.Ponni Transport Service and owning Ashok Leyland Lorry bearing registration No.TN 56-M-5088. The lorry was normally



used for transporting cotton yarns to Maharashtra. On one such occasion, while the said lorry was returning from Maharashtra, it was intercepted and found illicit arrack in the lorry. Hence, the lorry was seized and a case in Crime No.645 of 2021 for the offence under Section 4(1)(a) r/w. 4(1)(A) of TNP Act has been registered and the petitioner name is shown as A2 since he is the owner of the lorry. A1, driver was arrested and remanded to judicial custody. Admittedly, the petitioner was not in the scene of occurrence and the petitioner obtained anticipatory bail by an order of this Court in CrI.O.P.No.11697 of 2021. Thereafter, the first respondent sent a show cause notice dated 15.07.2021 informing that confiscation proceedings has been initiated, for which, the petitioner had sent objections to the show cause notice on 28.07.2021 and the same was not considered. without giving opportunity to the petitioner, in violation to natural justice, confiscation order has been passed on 09.08.2021. Though the respondent police had seized the vehicle and not produced the same before the concerned Judicial magistrate, hence, the petitioner had filed a petition under Section 451 of Cr.P.C for return of property in CrI.M.P.No.1073 of 2021 before the Judicial Magistrate, Mettupalayam, Coimbatore and the same was dismissed by the learned Magistrate on 25.08.2021. Against which, the petitioner has preferred criminal revision petition before this Court in CrI.R.C.No.565 of 2021 and got his vehicle released pending confiscation with a condition to deposit a sum of Rupees one lakh as non-refundable deposit and the petitioner has also deposited the said amount. Later, the petitioner was informed that the confiscation order was stuck on the wall of the petitioner's resident. The petitioner was very much available and he was not informed about any such order and earlier when the show cause notice was issued through post, for which the petitioner had sent an objection. There is no reason for the confiscation authority to stick the confiscation order in the wall. This is only to avoid the petitioner to object and make his appeal.

3. The learned Government Advocate (crl. side) submitted that the petitioner/A2, who is the owner of the lorry in collusion with A1, driver, had smuggled illicit arrack from Maharashtra, which was seized during routine patrol and show cause notice was sent to the petitioner. The petitioner has not given proper reply and he has not participated in the confiscation proceedings. The petitioner was granted return of his lorry subject to confiscation proceedings. When the order was attempted to be served to the petitioner, he avoided to receive the same. Hence, the order was stuck and it was recorded.

4. Considering the materials, it is seen that as per Section 14(4)(3) a reasonable opportunity of being heard is prescribed,



in this case admittedly, this condition has not been complied. In view of the same, the order passed by the confiscation authority is amounts to violation of principal of natural justice. Thus, all the points, which the petitioner agitates has to be agitated in the appeal. As per Section 14(5) any person aggrieved over the order of confiscation has to file an appeal before the Sessions Judge, having jurisdiction, within one month. In this case, confiscation has not been properly ordered. Hence, the petitioner could not file appeal and agitate. The petitioner has not filed the appeal in time due to the above said reasons. The petitioner's substantial right cannot be denied in filing an appeal. Hence, the delay is condoned and the petitioner to file an appeal within three weeks from the date of receipt of a copy of this order. The lower Appellate Court to take up the appeal without raising objection with regard to limitation and dispose of the appeal on merits and in accordance with law.

5. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Additional Superintendent of Police,
Crime against Women & Children,
Coimbatore-District.
2. The Inspector of Police,
Annur Police station,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.I.Periasamy, Advocate, S.R.No.65547

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PA(CO)
PBS/07/01/2022