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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.22539 OF 2017

&

CRL.M.P.NO.13173 OF 2017

Saravanan

... Petitioner

Vs

1. The Additional Superintendent of Police,
PEW, Namakkal.

2. The Inspector of Police,
PEW Namakkal Police Station.
[Crime No.349 of 2017]

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings of the first respondent in Na.Ka.No.24/Ka.ku/ka/ confiscation/2017 dated 13.06.2017 and quash the same as illegal and direct the first respondent to release the vehicle viz., Mahindra Xylo bearing registration No.***TN 48-AZ 4798** which was seized by the second respondent herein in connection with Crime No.349 of 2017 to the petitioner.

For petitioner : Mr.Senthil

For Respondents: Mr.R.Kishore Kumar,
Government Advocate [Criminal Side]

O R D E R

This petition has been filed to quash the confiscation proceedings of the first respondent dated 13.06.2017 and release the vehicle viz., Mahindra Xylo bearing registration No.* **TN 48-AZ 4798** to the petitioner.



2. The brief facts leading to the confiscation proceedings is as follows :

On 11.05.2017, while the prohibition wing were on patrol, the vehicle Mahindra Xylo bearing registration No.***TN 48-AZ 4798** was intercepted by the police team and found that 300 bottles of brandy was transported in the vehicle. Accordingly, the owner of the vehicle was arrayed as an accused and was sent to judicial custody. Thereafter, the Additional Superintendent of Police passed an Order of confiscation of the vehicle under section 14[4] of the Tamilnadu Prohibition Act.

3. The main ground on which this petition has been filed is that no notice whatsoever is issued to the owner of the vehicle before confiscation and no opportunity has been granted. It is his further contention that on the date of the alleged service of notice, the accused was in custody and he is in Central Jail, Salem. Such being the position, serving notice to the accused is highly improbable. Therefore, no opportunity is granted to the petitioner. In support of his contention to prove that he is in custody in the Central Jail, Salem the Order passed by this Court in HCP No.1054 of 2017 on 17.08.2017 has been filed. The said Order makes it clear that in respect of the petitioner the detention Order was made on 31.05.2017. Hence, prayed for quashing the proceedings.

4. The learned Government Advocate [Criminal Side] submitted that notice has been served to the petitioner and only seal has not been affixed by the Jailor. Hence, the Order of confiscation is in Order.

5. It is to be noted that though appeal remedy is available under 14 [5] of the Tamil Nadu Prohibition Act as against the confiscation Order, when the authorities have not followed the mandatory provision depriving property rights, the Court is not powerless to interfere with such an Order by invoking section 482 of Cr.P.C. Section 14 [4] of Tamilnadu Prohibition Act 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:



Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given-

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(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle:

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation ; and

(iii) a reasonable opportunity of being heard in the matter: Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle."

6. The Order of confiscation has been filed before this Court. Before confiscation, a notice in written informing the grounds on which the state is proposed to confiscate the vehicle has to be given to the owner of the vehicle. An opportunity of making representation in written within a reasonable time has to be given and a reasonable opportunity of being heard in that matter has also to be given to the owner of the vehicle. Further, while passing an Order of confiscation, option shall be given to the owner of the vehicle to pay, in lieu of its confiscation, an amount not exceeding the market rate of such vehicle. No such option is given in the Order. The foremost aspect is that opportunity to make representation itself is not properly given. Though it is submitted that the notice has been served on the petitioner on 01.06.2017, the Order of this Court in HCP.No.1054 of 2017 dated 17.08.2017 clearly shows that the petitioner has already been remanded to Central Jail and detention Order has also been passed against the petitioner on 31.05.2017. Therefore, an opportunity to make a representation and an opportunity to make oral submission is totally taken away. Such being the position, the Order passed by the Additional Superintendent of Police confiscating the vehicle, even without giving an option to pay the value of the vehicle is against the very mandatory provisions of the Act. Further, the question of filing an appeal within one month by the petitioner before the Sessions Court is also lost to the petitioner. In such view of the matter, this Court is inclined to set aside the Order of confiscation passed by the Additional Superintendent of Police.



7. Accordingly, this Criminal Original Petition is allowed and the Order of confiscation passed by the first respondent dated 13.06.2017 is set aside and the second respondent is directed to hand over the vehicle to the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)
(09.12.2021)

***Corrected as per order of this
Court dated 08.03.2022 made in
Crl.Mp.No.2892 of 2022 in
Crl.Op.No.22539 of 2017
Sd/-
Assistant Registrar (CS-VI)
(12.04.2022)**

//True Copy//

Sub Assistant Registrar

vrc/kbs

To

1. The Additional Superintendent of Police,
PEW, Namakkal.
2. The Inspector of Police,
PEW Namakkal Police Station.
3. The Public Prosecutor,
High Court, Madras.

***To be substituted
the order already
despatched on
05.01.2022**

+1cc to Mr.S.Senthil, Advocate SR.NO.16374

Crl.O.P.No.22539 of 2017 &
Crl.M.P.No.13173 of 2017

PL(CO)
SU(09/12/2021)
PM/12/04/2022