



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.06.2021**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.10478 of 2021

and

WMP (MD)Nos.8154 & 8155 of 2021

WEB COPY

K.Karuppasamy

... Petitioner

Vs.

1.The Additional Superintendent of Police,
Prohibition Enforcement Wing Office,
Karur District.

2.The Inspector of Police,
Karur P.E.W.Police Station,
Karur District.

(In Crime No.653 of 2021)

... Respondents/Complainant

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order vide C.No.72/ADSP/PEW/KRR/21 dated 11.06.2021 of the 1st respondent and quash the same as illegal and consequently directing the respondents to release the LEYLAND BOSS Lorry of the petitioner, bearing Registration No.TN-67-BL-6066 to his custody forthwith.

For Petitioner

: Mr.C.M.Arumugam

For Respondents

: Mr. P.Thilakkumar

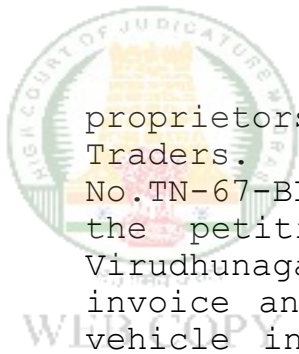
Government Advocate

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order vide C.No.72/ADSP/PEW/KRR/21 dated 11.06.2021 of the 1st respondent and quash the same as illegal and consequently directing the respondents to release the LEYLAND BOSS Lorry of the petitioner, bearing Registration No.TN-67-BL-6066 to his custody forthwith.

2. Mr.P.Thilakkumar, learned Government Advocate accepts notice on behalf of the respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that the petitioner, for his business operation, he had purchased a lorry in the name of his



proprietorship concern in the name and style of M/s.Sri Lakshmi Traders. The lorry is a LEYLAND BOSS Model, bearing Registration No.TN-67-BL-6066. On 30.05.2021 at about 12.30 a.m., the driver of the petitioner's vehicle drove the vehicle from Karnataka to Virudhunagar District with a load of Plastic Rolls, through proper invoice and permit. At that time, the respondent herein involved vehicle inspection and found that the driver of the vehicle had brought 11 liquor bottles along with him illegally. Pursuant to the seizure of the vehicle, a case was registered in Crime No.653 of 2021, under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937, for the alleged transportation of liquor bottles.

4. The learned counsel appearing for the petitioner would submit that subsequent to seizure, the 1st respondent vide his Memo, dated 01.06.2021, directed the petitioner to give his explanation as to how the liquor bottles were transported in his commercial vehicle by his driver. The petitioner explained the fact that without his knowledge, the driver committed the offence of illegal transportation of liquor bottles and further requested the 1st respondent to release his vehicle forthwith, as the same is his livelihood income source. On the other hand, within a short period of less than ten days, the 1st respondent passed the final order of confiscation, without giving him a reasonable opportunity of being heard. When the petitioner approached the learned jurisdictional Magistrate, by filing a petition for return of vehicle, the said petition was returned on 01.06.2021, with an endorsement that no records available in the Court. Moreover, it is apparent on the face of the impugned confiscation order that the driver of the vehicle has not been examined about the possession of the liquor. No responsibility can be fixed either upon the petitioner or his vehicle, for the mistake committed by the driver of the vehicle. According to the petitioner, the confiscation order has been passed against him without authority under law. It is contended by the learned counsel appearing for the petitioner that no notice has been given to him before passing the confiscation order. Under such circumstances, this Writ Petition has been filed challenging the confiscation order passed by the first respondent. Section 14(4) of the Tamil Nadu Prohibition Act, 1937, reads as follows:-

"14.(1)...

14(.2)...

14.(3)...

14.(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-

(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:

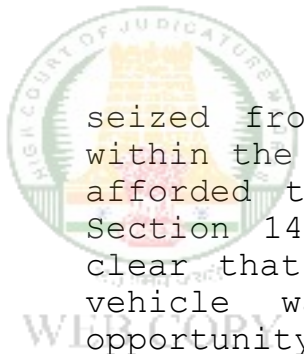
Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given on option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.

(5)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 Sessions having jurisdiction)"

5. The confiscation order has been passed under Sub Section 4 of Section 14 of the Tamil Nadu Prohibition Act, 1937. As seen from the said clause, a notice in writing informing the grounds on which the respondents are proposing to confiscate the vehicle, is required to be given and an opportunity should also be given to the person from whom the vehicle has been seized to give his explanation in writing, within a reasonable time not exceeding 14 days for objecting to the confiscation. A reasonable opportunity of being heard should also be given to the person from whom the vehicle has been seized.

6. This Court has perused and examined the impugned order of confiscation passed by the first respondent under Section 14 (4) of the Tamil Nadu Prohibition Act, 1937.

7. As seen from the impugned order, even though notice has been given to the petitioner about the proposed confiscation by the first respondent on 11.06.2021 and an explanation was also given by the petitioner to the said show cause notice and the impugned order has not considered the submission made by the petitioner that liquor



seized from the vehicle was for personal consumption and it is within the prescribed limits. Further, no personal hearing has been afforded to the petitioner as seen from the confiscation order. Section 14(4) of the Tamil Nadu Prohibition Act, 1937, makes it clear that apart from issuing notice to the person from whom the vehicle was seized, he should be afforded with sufficient opportunity to raise all contentions with regard to the issues raised in the show cause notice.

8. The Tamil Nadu Liquor (Possession of Personal Consumption) Rules, 1996, prescribes the maximum quantity of liquor that can be carried for personal consumption in a vehicle. According to the petitioner, 11 liquor bottles seized by the respondent, are within the permissible limits. These factors have not been considered under the impugned confiscation order. Therefore, it is clear that the petitioner has not been afforded with sufficient opportunity to raise all contentions with regard to the show cause notice, dated 01.06.2021 issued by the first respondent. Therefore, principles of natural justice have been violated by the first respondent, as he has not followed the procedure contemplated under Section 14 (4) of the Tamil Nadu Prohibition Act, 1937, before issuing the confiscation order.

9. For the foregoing reasons, the impugned order, dated 11.06.2021 passed by the first respondent, is hereby quashed and the matter is remanded back to the first respondent for fresh consideration and the first respondent shall pass final orders on merits and in accordance with law, after affording sufficient opportunity to the petitioner, to raise all contentions including granting him the right of personal hearing, within a period of twelve weeks from the date of receipt of a copy of this order.

10. Since the impugned order has been quashed and the vehicle is kept in the open place, which may resulting the vehicle becoming a wreck, interim release of the vehicle will have to be granted to the petitioner, subject to the fulfillment of the following conditions:-

(i)the petitioner shall execute a bond for a sum of Rs.25,000/-(Rupees Twenty Five Thousand only) in favour of the second respondent within a period of two weeks from the date of receipt of a copy of this order.

(ii)the petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed.

(iii)the petitioner shall not change the colour and scheme of the vehicle.

(iv)the petitioner shall not use the vehicle for any illegal activities.

(v)before releasing the vehicle, the police authority shall take photographs of the vehicle at the cost of the



petitioner.

(vi)The petitioner shall produce all xerox copies of the documents pertaining to the ownership of the seized vehicle to the third respondent.

(vii)As and when the respondents call for the vehicle for enquiry, the petitioner has to produce the vehicle in question and he shall cooperate with the enquiry to be conducted by the respondents.

11. Upon completion of the above mentioned formalities, the respondents shall release the petitioner's vehicle viz., LEYLAND BOSS Lorry, bearing Registration No.TN-67-BL-6066 to the petitioner forthwith and without any delay. If the undertaking given by the petitioner is breached, the petitioner will not be entitled for interim release of the vehicle in the future.

12. The Writ Petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional Superintendent of Police,
Prohibition Enforcement Wing Office,
Karur District.

2.The Inspector of Police,
Karur P.E.W.Police Station,
Karur District.

+1 CC to M/s.SPL GP (SR-20303[F] dated 25/06/2021)

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-20274[F] dated 25/06/2021)

W.P (MD) No.10478 of 2021
24.06.2021