



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.10841 of 2021

and

W.M.P(MD)No.8475 of 2021

WEB COPY

K.Paneer Selvam

... Petitioner

Vs.

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

2.The Inspector of Police,
Thiruchuli Police Station,
Thiruchuli,
Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records of the impugned Confiscation Order passed by the first respondent vide his proceedings in Na.Ka.No.14-3/Ka.Thu.Ka./Ma.Vi.A.B/V.Ma/2019 dated 27.04.2021, quash the same as illegal and arbitrary.

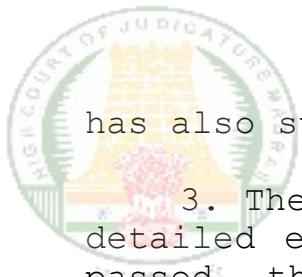
For Petitioner
For Respondents

: Mr.A.Balaji
: Mr.P.Thilak Kumar,
Standing Counsel

O R D E R

This writ petition has been filed by the petitioner challenging the confiscation Order passed by the first respondent vide his proceedings in Na.Ka.No.14-3/Ka.Thu.Ka./Ma.Vi.A.B/V.Ma/2019 dated 27.04.2021.

2. According to the petitioner, his vehicle namely Mahendra Bolero bearing Registration No.TN 67 BX - 5969 was seized on 31.03.2019 in respect of a case in Crime No.106 of 2019 registered by the second respondent police for the offence under Section 4(1-A) and 14(1) of the Tamil Nadu Prohibition Act. Subsequently, the petitioner filed a writ petition in W.P(MD)No.10432 of 2019 seeking interim custody of the vehicle and the same was allowed vide order dated 13.04.2019 and now, the vehicle is in the custody of the petitioner. While the matter stood thus, the first respondent has issued a memo to the petitioner on 15.12.2020 under Section 14(4) of the Tamil Nadu Prohibition Act and the petitioner



has also submitted his explanation on 13.12.2020.

3. The grievance of the petitioner is that, in spite of giving detailed explanation by the petitioner, the first respondent has passed the impugned confiscation order without giving an opportunity of personal hearing to the petitioner and therefore, there is violation of principles of natural justice and therefore, the impugned order is liable to be set aside.

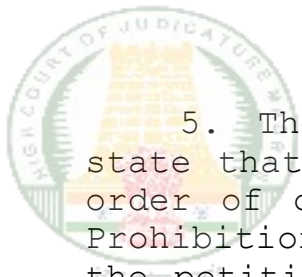
4. The learned counsel for the petitioner draws attention of this Court to Section 14(4) of the Tamilnadu Prohibition Act, 1937. The provision reads as follows:-

"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 an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle."



5. The learned standing counsel for the respondents would state that the order under challenge in the writ petition is an order of confiscation passed under Section 14 of the Tamil Nadu Prohibition Act, 1937 and there is an appeal remedy available to the petitioner before the Sessions Court and therefore, this writ petition is not maintainable.

6. For that, the learned counsel for the petitioner would state that if he can demonstrate the violation of the principles of natural justice, then, the writ petition is maintainable.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Admittedly, the petitioner has not been given an opportunity of personal hearing before passing the impugned confiscation order as per the proviso-(iii) to Section 14(4) of the Tamil Nadu Prohibition Act, 1937 and therefore, the order impugned in the writ petition is liable to be set aside and accordingly, the same is set aside. The matter is remitted back to the file of the jurisdictional authority for passing fresh orders. The jurisdictional authority will issue a hearing notice to the petitioner herein and thereafter, pass fresh orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

9. The Writ Petition is allowed on these terms. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

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,
Virudhunagar District,
Virudhunagar.



2.The Inspector of Police,
Thiruchuli Police Station,
Thiruchuli,
Virudhunagar District.

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