



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **26.07.2021**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.12611 of 2021

Sathiyaraj

... Petitioner

Vs.

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

2.The Inspector of Police,
Venkamedu Police Station,
Karur District.

Crime No.177 of 2021

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, call for the records relating to the confiscation order in C.No.93/ADSP/PEW/KRR/21, dated 12.06.2021 and quash the same as illegal and directing the respondents to release the Honda Dio two wheeler, bearing Registration No.TN-47-AL-1309 to his custody immediately.

For Petitioner : Mr.R.Mathiyalagan

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 relating to the confiscation order in C.No.93/ADSP/PEW/KRR/21, dated 12.06.2021 and quash the same as illegal and direct the respondents to release the petitioner's two wheeler viz., Honda Dio, bearing Registration No.TN-47-AL-1309, 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 he purchased a two wheeler viz., Hero Honda Dio, bearing Registration No.TN-47-AL-1309, for his personal use and he is having a valid insurance. On 29.04.2021, one Marimuthu, attached to the 2nd respondent Police Station, at Karur to Vangal Road near Palammalpuram Babu Mutton Stall, had conducted a vehicle check up and found 48 nos (180 ml) of brandy bottles and seized the said two wheeler of the petitioner. Pursuant to the seizure of the vehicle, a case was registered in Crime No.177 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 the act of the respondent was totally illegal and without any valid cause, the petitioner's two wheeler has been seized in a high handed manner. Petitioner contacted the respondent concerned at their office on periodical intervals, for releasing of his vehicle, as his livelihood has been affected. In turn, the same was not fetched any good thing to the petitioner. Petitioner do not have any role in the alleged possession of liquor bottles and his two wheeler has been unnecessarily seized and the 1st respondent has issued confiscation memo and immediately, the petitioner gave an explanation before the 1st respondent. But, without considering the explanation, the 1st respondent issued confiscation order in C.No.93/ADSP/PEW/KRR/21, dated 12.06.2021.

5. The learned counsel appearing for the petitioner would further submit that the 1st respondent passed the final order of confiscation, dated 12.06.2021, without giving him a reasonable opportunity of being heard. When the petitioner approached the learned jurisdictional Magistrate, Karur, by filing a petition for return of vehicle on 24.06.2021, the said petition was returned with an endorsement that no records available in the Court. 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:

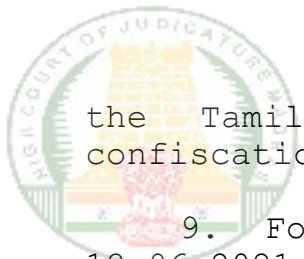
Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given on option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.

(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)"

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. The confiscation order, dated 12.06.2021, 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.

8. As seen from the impugned order, even though notice has been given to the petitioner about the proposed confiscation by the first respondent 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. 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. Therefore, the 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 12.06.2021 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:-

- a) *The petitioner is directed to deposit a sum of Rs.5,000/- (Rupees Five Thousand Only) to the credit of Government of Tamil Nadu, CMPRF in IOB, Secretariat Branch, Chennai-9 (Account No.11720 10000 00070, IFSC Code: IOBA0001172), without prejudice to her rights and contentions;*
- b) *The petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed.*
- c) *The petitioner shall produce all the documents pertaining to the ownership of the seized vehicle.*
- d) *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.*

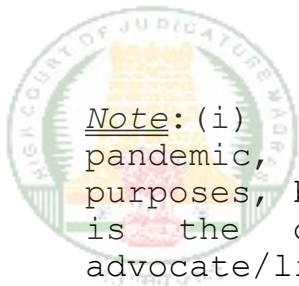
11. Upon completion of the above mentioned formalities, the respondents shall release the petitioner's vehicle viz., Honda Dio two wheeler, bearing Registration No.TN-47-AL-1309, to the petitioner forthwith and without any delay. If the undertaking given by the petitioner is breached, the petitioner will not be entitled for interim release of the vehicle in the future.

12. The Writ Petition is disposed of accordingly. No costs.
Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)



Note: (i) 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.

WEB COPY

To

- 1.The Additional Superintendent of Police,
Prohibition Enforcement Wing Office,
Karur District.
- 2.The Inspector of Police,
Venkamedu Police Station,
Karur District.
- 3.The officer incharge,
Chief Minister Public relief fund,
Indian Overseas Bank,
Secretariat Branch, Chennai-9.

+1 CC to M/s.SPL GP (SR-24022[F] dated 27/07/2021)

W.P (MD) No.12611 of 2021
26.07.2021

RD(9.08.2021) 5P 5C