



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **15.12.2021**

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.22203 of 2021

Mohan

... Petitioner

Vs.

1. The Superintendent of Police,
Office of Superintendent of Police,
Ramanathapuram District.

2. The Deputy Superintendent of Police,
Prohibition Excise and Department,
Ramanathapuram District.

3. The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, directing the respondents herein to release TVS STAR CITY PLUS BS III registration bearing No.TN 65 AD 0729 and within a time stipulated by this Court.

For Petitioner : Mr.J.Vishnu
For Respondents : Mr.C.Satheesh,
Government Advocate.

O R D E R

Mr.J.Vishnu, learned Counsel on record for writ petitioner is before this Court. Mr.C.Satheesh, learned Government Advocate accepts notice on behalf of all the three respondents.

2. With the consent of both sides, the captioned main writ petition is taken up and heard out.

3. There is no disputation or disagreement that in a similar matter another Hon'ble Single Judge has ordered release of the seized vehicle on certain terms. To be noted, this is a case of alleged violation of Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937.

4. In the light of there being no disputation or disagreement that this matter is similar to the case in which another Hon'ble Single Judge has directed release of the vehicle by imposing certain conditions, it is not necessary to dilate further on facts. The order made by the other Hon'ble Judge with the consent of both sides is as follows:



'Heard the learned counsel on either side. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petition mentioned vehicle was seized in connection with Crime No.57 of 2020 registered on the file of the second respondent for the offence under Sections 4(1)(a) and 4(1)(i) of Tamil Nadu Prohibition Act. It is not in dispute that till now no confiscation order under Section 14 of the Tamil Nadu Prohibition Act has been passed. It is also not in dispute that the vehicle has not been produced before the jurisdictional Criminal Court.

3. In similar circumstances, this Court vide order dated 09.07.2020 in W.P.(MD)No.2679 of 2020 (Sathiah v. The State of Tamil Nadu and Others) has passed the following order:-

"Heard the learned counsel on either side.

2. The petition mentioned vehicle belongs to the petitioner herein. It appears that the said vehicle was involved in Crime No.231 of 2019, registered on the file of the third respondent under Tamil Nadu Prohibition Act, 1937. The petitioner's son Karthick was arrested and he was found in possession of 384 Brandy Bottles. The petitioner's son was said to have driven the said vehicle at the relevant point of time. The grievance of the petitioner is that the vehicle in question has not been produced before the Judicial Magistrate till date. His further apprehension is that even without complying the necessary procedures, the second respondent is likely to auction the vehicle, which necessitated the petitioner to file the present Writ Petition.

3. The learned counsel for the petitioner placed reliance on the order dated 06.06.2019 made in CrI.O.P.No.11945 of 2019, wherein the learned judge has observed as follows:-

11. The provisions of Section 49A of the Tamil Nadu Forest Act does not in any way take away the jurisdiction of the Magistrate Court to exercise its power under Section 451 or 457 of Cr.P.C. The confiscation of a vehicle involved in the commission of an offence



the question of auctioning the vehicle even without formal confiscation does not arise at all. Also, it does not mean that the vehicle involved in criminal case should not be produced before the Jurisdictional Court. In fact, the provisions of Criminal Procedure Code envisage that the seized vehicle should be produced before the Jurisdictional Court and the party concerned can avail the right to claim the vehicle by way of interim or final custody.

5. Therefore, I direct the respondents to produce the vehicle in question before the jurisdictional criminal Court without any further delay. Upon such production, it is open to the petitioner to apply for return under Section 451 of Cr.P.C. Of course, the authorities are at liberty to take action to confiscate the vehicle as per law.

6. In the above terms, the Writ Petition is allowed. No costs.'

4. The petitioner's counsel on instructions gives an undertaking that the petitioner will not alienate the petition mentioned vehicle till the confiscation proceedings are over. She also gives a further undertaking that the petitioner will also produce the vehicle as and when the respondents call for the vehicle for enquiry and cooperate with the enquiry to be conducted by the respondents.

5. I make it clear that it is very much open to the respondents herein to initiate and conclude the confiscation proceedings. The only relief that I am granting is interim custody of the vehicle. I have not gone into the merits of the matter.

6. Therefore, the respondents are directed to release the said vehicle subject to the following conditions:-

- a) The petitioner is directed to pay a sum of Rs.2,000/- (Rupees Two Thousand only) in favour of the Officer-in-Charge, High Court Legal Services Committee, Madurai Bench of Madras High Court, Madurai, S.B.A/c.No.496037387, IFSC : IDIB000H040, Indian Bank, High Court Branch, Madurai. It will be a non refundable payment.



WEB COPY

The Registrar (Judicial) is directed to spend the amount for appropriate welfare activities such as feeding the disadvantaged communities in Madurai District.

- b) The petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed.
- c) petitioner shall produce all the documents pertaining to the ownership of the seized vehicle.
- d) 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.

7. Upon completion of these formalities, the respondents shall release the vehicle forthwith without any delay. If this undertaking given by the petitioner is breached, the petitioner will not be entitled to interim release of the vehicle in future. The Writ Petition is allowed accordingly. There shall be no order as to costs.'

5. The conditions imposed and the release of the vehicle post compliance of the conditions have been set out by the Hon'ble Single Judge in paragraph Nos.5, 6 & 7.

6. Therefore, there shall be a similar order in the captioned matter. The order is as follows:

6.1. I make it clear that it is very much open to the respondents herein to initiate and conclude the confiscation proceedings. The only relief that I am granting is interim custody of the vehicle. I have not gone into the merits of the matter.

6.2. Therefore, the respondents are directed to release the said vehicle subject to the following conditions:

a) The petitioner is directed to pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the credit of the Officer-in-Charge, High Court Legal Services Committee, Madurai Bench of Madras High Court, Madurai, S.B.A/c.No.496037387, IFSC : IDIB000H040, Indian Bank, High Court Branch, Madurai. It will be a non refundable payment. The Registrar (Judicial) is directed to spend the amount for appropriate welfare activities such as feeding the disadvantaged communities in Madurai District;



b) The petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed;

c) The petitioner shall produce all documents pertaining to ownership of the seized vehicle;
and

d) 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.

6.3. Upon completion of these formalities, the respondents shall release the vehicle forthwith without any delay. If aforementioned undertaking given by the petitioner is breached, the petitioner will not be entitled to interim release of the vehicle in future.

7. Captioned Writ Petition is disposed of in aforesaid manner i.e., with aforementioned directive without any order as to costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

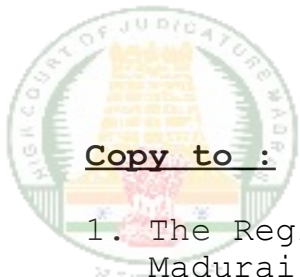
Sub Assistant Registrar(CS)

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 Superintendent of Police,
Office of Superintendent of Police,
Ramanathapuram District.
2. The Deputy Superintendent of Police,
Prohibition Excise and Department,
Ramanathapuram District.
3. The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.

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Copy to :

1. The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

2. The Officer-Incharge,
Legal Aid Services Committee,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.SPL GP (SR-39259[F] dated 17/12/2021)

W. P (MD) No. 22203 of 2021

15.12.2021

USK (27.12.2021) 7P 7C