



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

W.P.Nos.4525, 4530 & 4534 of 2022
and

W.M.P.Nos.4652, 4653, 4664, 4665, 4667 & 4668 of 2022

- 1.S.Prabhu,
S/o.Subramaniyan ... Petitioner in W.P.No.4525 of 2022
- 2.M.Roja,
W/o.Manikandan ... Petitioner in W.P.No.4530 of 2022
- 3.M/s.SPP Enterprises,
Represented by its Proprietor S.Prabhu,
No.160/6A, National Highway,
Mambakkam Village, Sriperumbudur,
Kanchipuram District. ...Petitioner
in W.P.No.4534 of 2022

Vs.

- 1.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Kancheepuram District.
- 2.The Sub-Inspector of Police,
C1 Sriperumbudur Police Station,
Kancheepuram District. ...Respondents in all W.Ps

Prayer in W.P.No.4525 of 2022: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent vide his Auction Notice dated 21.02.2022 for the auction to be held on 24.02.2022 or any other subsequent date and to quash the same with respect to the petitioner's vehicle listed under Item Nos.14 and 17.

Prayer in W.P.No.4530 of 2022: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent vide his Auction Notice dated 21.02.2022 for the auction to be held on 24.02.2022 or any other subsequent date and to quash the same with respect to the petitioner's vehicle listed under Item No.16.



Prayer in W.P.No.4534 of 2022: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent vide his Auction Notice dated 21.02.2022 for the auction to be held on 24.02.2022 or any other subsequent date and to quash the same with respect to the petitioner's vehicle listed under Item No.15.

For Petitioners: Mr.K.M.Aasim Shehzad
(In all W.Ps)

For Respondents: Mr.Gokulakrishnan
(In all W.Ps) Additional Public Prosecutor

COMMON ORDER

These writ petitions have been filed for the issuance of a Writ of Certiorari, to call for the records of the first respondent vide his Auction Notice dated 21.02.2022 for the auction to be held on 24.02.2022 or any other subsequent date and to quash the same with respect to the petitioners vehicles listed under Item Nos.14 to 17.

2. The learned counsel appearing for the petitioners would submit that the petitioners are owners of the vehicles. The second respondent on 05.02.2022 has registered a case against the petitioners in Crime No.96 of 2022 for the offences under Section 353 of IPC and Sections 4[1] [aa] and 4 [1-A] of the Tamil Nadu Prohibition Act, 1937 alleging that the vehicles transported illicit liquor bottles. While the petitioners were contemplating legal action, show cause notices were given to the petitioners by the first respondent on 15.02.2022 with regard to confiscation proceedings. As per the show cause notices, the petitioners were given 14 days time to give reply and the petitioners have also submitted their response/reply. However, without affording an opportunity of hearing and without conducting an enquiry, the first respondent has passed the impugned orders issuing notice for auction the vehicles, even without passing an order of confiscation. The first respondent straightaway issued notification for auctioning the vehicles, without fulfillment of formalities set out in Section 14(4) of the Tamil Nadu Prohibition Act, 1937. Further, the Act itself provides for Appeal against the order of confiscation.

3. The learned counsel for the petitioners would further submit that in similar circumstances, this Court in W.P(MD). No.2679 of 2020 dated 09.07.2020, relying upon earlier judgment of this Court in Crl.O.P.No.11945 of 2019 dated 06.06.2019, had set aside the notice of auction and directed the respondents to produce the vehicle before the Jurisdictional Criminal Court. The learned counsel further submit that in the above case, this



Court has also granted liberty to the respondents to proceed with the confiscation proceedings in accordance with law.

4. The learned Additional Public Prosecutor for the respondents would fairly concede that the show cause notice is dated 15.02.2022 granting 14 days time for giving a reply and the first respondent even without passing confiscation order, has issued the notice of auction on 21.02.2022. The learned Additional Public Prosecutor further submit that though the tender auction was fixed on 24.02.2022, the auction was not conducted by the respondents so far.

5. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondents and perused the materials available on record.

6. This Court in W.P(MD).No.2679 of 2020 dated 09.07.2020 has held as follows:-

"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 under the Tamil Nadu Forest Act is not only punitive in nature but also a deterrent. When a vehicle is involved in the commission of offence under the Tamil Nadu Forest Act and there are prima facie materials to show that the owner of the vehicle did not have any knowledge or connivance in the commission of the offence, he can always file an application for return of vehicle under Section 451 or 457 of Cr.P.C. But, however the Court while exercising its powers will have to do it with care and caution and should provide an opportunity to the Public Prosecutor and also must keep in mind the spirit behind Section 49A of the Tamil Nadu Forest Act, 1882 and its benevolent object.

12.Even though, the Judgment cited by the learned counsel for the petitioner deals with the case under the Tamil Nadu Prohibition Act, the ratio in the said Judgment can be applied even in a case where confiscation proceedings have been initiated under the Tamil Nadu Forest Act.



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13. In view of the above, the reason given by the Court below for returning the petition filed by the petitioner is unsustainable and the same is hereby set aside. The Court below is directed to consider the petitioner afresh by keeping in mind the judgment of the Hon'ble Division bench referred supra and after affording an opportunity to the prosecution. This exercise shall be completed by the Court below within a period of one month from the date of a receipt of copy of this order."

4. The learned Government counsel wanted to rely upon G.O.Ms.No.39 dated 22.10.2019, Home, Prohibition and Excise (VIII) Department to sustain his contention that the second respondent can very well auction the vehicle in question. But the said Government order will come into play after the confiscation is done under Section 14 of Tamil Nadu Prohibition Act 1937. In this case, there is nothing on record to show the fulfillment of formalities set out in Section 14(4) of the Tamil Nadu Prohibition Act. Therefore, 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 at liberty to take action to confiscate the vehicle as per law."

7. In these cases also, even without passing an order of confiscation, the notice of auction has been issued by the first respondent.

8. The impugned auction notice dated 21.02.2022, in respect of the petitioners vehicles listed under Item Nos.14 to 17 are hereby set aside. The respondents are directed to produce the vehicle in question before the Jurisdictional Criminal Court without any further delay. Upon such production, it is open to the petitioners to apply for return under Section 451 of Cr.P.C and the learned Magistrate shall consider the same in accordance



with law. However, the respondents are given liberty to take action for confiscation of the vehicles as per law.

9. In the above terms, these Writ Petitions stand allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Kancheepuram District.

2.The Sub-Inspector of Police,
C1 Sriperumbudur Police Station,
Kancheepuram District.

+3 CCS to M/s. BFS Legal, sr 14297.

W.P.Nos.4525, 4530 & 4534 of 2022
and
W.M.P.Nos.4652, 4653, 4664, 4665, 4667 & 4668 of 2022

EV(CO)
SP(07/03/2022)