

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.5875 of 2022
and W.M.P.No.5973 of 2022

G.Stella Manickavalli

... Petitioner

Vs.

1.The Deputy Superintendent of Police
Prohibition of Enforcement Wing
Erode District

2.The Inspector of Police
Bangalapudur Police Station
Erode District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the confiscation proceedings in Na.Ka.No.528-II/Thu.Ka.Ma.V./Ee/2021 dated 03.01.2022 issued by the 1st respondent and quash the same as illegal and arbitrary.

For Petitioner : Mr.R.John Sathyan
for Mr.P.Divakar

For R1 & R2 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The Writ Petition is filed seeking for a direction, to call for the records pertaining to the confiscation proceedings in Na.Ka.No.528-II/Thu.Ka.Ma.V./Ee/2021 dated 03.01.2022 issued by the 1st respondent and quash the same as illegal and arbitrary.

2.Mr.John Sathyan, the learned Senior counsel appearing for the petitioner submitted that earlier the confiscation proceedings was initiated on 12.08.2021 in Na.Ka.No.528-I/Thu.Kaa.Ma.V/Ee/2021 which was put in challenge in Appeal. Thereafter, the said proceedings were recalled by the 1st respondent on 23.09.2021 vide their proceedings in Na.Ka.No.528-I/Thu.Kaa.Ma.V/Ee/2021. Now, again the 1st respondent herein issued a Memo / communication notice dated 03.01.2022 in

Na.Ka.No.528-II/Thu.Kaa.Ma.V.Ee/2021 giving final opportunity to pay a sum of Rs.14,00,000/- along with G.S.T. at 18% within a period of seven days and the 2nd respondent herein had also sent a letter undated signed on 0303.2022 to surrender the vehicle without any valid reason, which is not permissible in law. Accordingly, prays for quashing of the same.

3.Heard Mr.John Sathyan, the learned Senior Counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

4.At the outset, I am not agreeing with the learned counsel for the petitioner. While this Court passed an order dated 18.08.2021, directing the learned Judicial Magistrate No.1, Gopicherrypalayam to release the vehicle bearing Regn. No.TN-72-BV-5544 to the petitioner imposing certain conditions. The relevant portion of the order passed in Crl.R.C.No.491 of 2021 is extracted hereunder:

8.Considering the facts and circumstances of the case and that the vehicle is kept in the open space and exposed to heat, rain and dust and also considering the fact that the Government itself is doing business of selling alcohol through TASMALC shops, it is very easy for the public to access the subject matter liquor, this Court directs the learned learned Judicial Magistrate No.1, Gopicherrypalayam to return the vehicle bearing Registration No.TN-72-BV-5544 to the petitioner on the following conditions:-

(i) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove his ownership and the learned Magistrate, on perusal of the RC book and other records, retaining the xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle ;

(ii) The petitioner shall not alter or alienate the vehicle in any manner till confiscation proceedings are over;

(iii) The petitioner is directed to deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only), as non-refundable deposit through RTGS / NEFT in favour of the Joint Secretary & Treasurer, Chief Minister's Public Relief Fund, Finance (CMPRF) Department, Government of Tamil Nadu, Secretariat, Chennai-600009, Tamil Nadu, India, e-mail: jscmprf@tn.gov.in or by Electronic Clearing System (ECS) to Indian Overseas Bank, Secretariat Branch, Chennai-600009, S.B.Account No.11720 10000 00070, IFS Code IOBA0001172, CMPRF PAN: AAAGC0038F and on

such payment and production of proof, the vehicle shall be returned;

(iv) The petitioner shall also give an undertaking that she will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent or the Court below as well as by the District Collector of the District or authorized officer in that behalf by the Government;

(v) The petitioner shall participate in the confiscation proceedings, if any initiated, and shall produce the vehicle, before the confiscation authority. This order is subjected to the confiscation proceedings.

5.As the return of vehicle itself is subject to the order of this Court passed in Crl.R.C.No.491 of 2021 dated 18.08.2021, wherein the petitioner was directed to participate in the confiscation proceedings, if any initiated, and also to produce the vehicle before the confiscation authority. Accordingly, the petitioner is hereby directed to produce the vehicle before the confiscating authority for initiation of the confiscation proceedings. The petitioner having taken the benefit of the order of this Court, cannot float the conditions imposed by this Court. Admittedly, the scope of confiscation proceedings, can be decided only in the appeal and not in this proceedings.

6.In such view of the matter, that the rights of the petitioner will be decided in the appeal proceedings and the petitioner is bound to follow the earlier condition imposed by this Court in Crl.R.C.No.491 of 2021 vide order dated 18.08.2021.

7.In the result, this Writ Petition stands dismissed. The petitioner is directed to produce the vehicle before the confiscating authority, and if anything to be done further after the confiscation proceedings, then the petitioner at liberty to challenge the same in appropriate proceedings as per law. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To.

1.The Deputy Superintendent of Police
Prohibition of Enforcement Wing
Erode District

2.The Inspector of Police
Bangalapudur Police Station
Erode District

3.The Public Prosecutor
Madras High Court
Chennai 600 104.

+1cc to Mr.P.Divakar, Advocate, S.R.No.37009

W.P.No.5875 of 2022
and W.M.P.No.5973 of 2022

SMI (CO)
SB(13/07/2022)