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Crl.O.P.No.13136 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 19.10.2022**

**CORAM:**

**THE HONOURABLE MS JUSTICE R.N.MANJULA**

**Crl.O.P.No.13136 of 2021 and**  
**Crl.M.P.No.7222 of 2021**

State represented by  
The Inspector of Police,  
PEW Gummidipoondi PS,  
Thiruvallur District,  
Crime No.403 of 2019

... Petitioner

Vs.

D.Suresh Varma

... Respondent

**Prayer:** Civil Original Petition is filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 15.06.2021 made in Criminal Revision Petition No.9 of 2020 passed by the learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri, reversing the order of the learned District Munsif cum Judicial Magistrate Court, Gummidipoondi, dated 22.01.2020 made in CMP No.1084 of 2019 on the file of the.

For Petitioner : Mr.A.Damodaran,  
Additional Public Prosecutor

For Respondent : Mr.K.R.Ramesh kumar

**ORDER**



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This Criminal Original Petition has been preferred challenging the order of the learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri, dated 15.06.2021 made in Crl.R.C.No.9 of 2020.

2. The petitioner is the State of Tamil Nadu, represented by the Inspector of Police, Gummidipoondi Police Station, Thiruvallur District. The respondent was charged for the offence under Section 4 (1) (a) of the Tamil Nadu Prohibition Act for the alleged illegal transportation of 48 bottles of brandy from Chennai to Andra Pradesh in the vehicle bearing Registration No.AP-04-BA-6606 TOYOTA ETIOS GD (F) BSIV, Colour: Silver Mica Metallic, Chassis No.MBJB49BT6001608710517, Engine No. INDIA 36369, Year : 05/2017; the said vehicle was seized and kept in the custody of the petitioner; hence the respondent herein has filed the petition under Sections 451 and 457 of Cr.P.C., in Crl.M.P.No.1084 of 2019, seeking interim custody of the vehicle before learned Magistrate, Gummidipoondi. The learned Magistrate had chosen to dismiss the petition by observing that the respondent Police is empowered to initiate confiscation proceedings under Section 14 (4) of the Tamil Nadu Prohibition Act, 1958 and the procedure contemplated under Section 14 (4) of the said Act, shall



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have to be followed by the prohibition officer after giving an opportunity to hear the owner of the vehicle.

3. Aggrieved over the said order, dated 22.01.2020, the respondent / vehicle owner has preferred the Criminal revision in CrI.R.C.No.9 of 2020 before the learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri. On contest, the learned IV Additional District and sessions Judge, Thiruvallul @ Ponneri allowed the Criminal Revision on 15.06.2021, directing the respondent Police to return the vehicle to the owner on condition. The present Criminal Original Petition has been preferred by the State by challenging the said order.

4. Heard Mr.A.Damodaran, learned Additional Government Pleader for the petitioner and Mr.K.R.Ramesh Kumar, learned counsel for the respondent and perused the materials available on record.

5. The learned Additional Public Prosecutor appearing for the petitioner would submit that law does not permit the Revision petition to be filed against the interim orders passed under Section 451 or 457 of Cr.P.C.,



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in view of Section 397(2) of Cr.P.C., In support of his contention, the attention of this Court was drawn to the decision of the Kerala High Court made in ***Crl.M.P.No.4431 of 2020, dated 11.11.2020 in Mohammed Ali M.P vs The Union Territory of Lakshadweep, represented by the Special Public Prosecutor, High Court of Kerala, Ernakulam.***

6. The learned counsel for the respondent/owner of the vehicle would submit that the petitioner who was a party to the proceedings under Section 451 of Cr.P.C., did not raise the above legal point while contesting the impugned revision filed before the IV Additional District and Sessions Court, Thiruvallur @ Ponneri and the confiscation proceedings under Section 14 (4) of the Tamil Nadu Prohibition Act, 1958 has already been concluded.

7. No doubt, an order passed under Section 451 of Cr.P.C., for interim custody of the vehicle, is interim in nature. Hence, it is submitted by the learned Additional Public Prosecutor that the respondent if aggrieved by the order passed by the Magistrate, ought to have filed an original petition before the High Court and ought not to have invoked the Revisional Powers



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of the Sessions Court under Section 397 (1) of Cr.P.C., For the sake of convenience, Section 397 of Cr.P.C., is extracted hereunder:

*397. Calling for records to exercise powers of revision.*

*(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, - recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.*

*(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*



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*(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.*

8. Even though the respondent has filed the petition seeking interim custody of the vehicle, the learned Magistrate has passed an order to confiscate the vehicle in accordance with Section 14 (4) of the Tamil Nadu Prohibition Act, 1958. The said order is not an interim order, though the case might be pending before the Magistrate. Usually, the order of confiscation will be passed only at the end of the trial depending on the result and nature of the offence. But under the special provisions of Tamil Nadu Prohibition Act, the Collector or the Prohibition officer in charge of the District or any other officer authorised by the State Government in this behalf is required to pass an order for confiscation of the property like the vehicle involved in this case, even if the prosecution is not initiated. In other words, irrespective of the initiation or the pendency of the prosecution for the offence committed under the Tamil Nadu prohibition Act, the Authority concerned is empowered to confiscate the vehicle involved in the offence if the authority is satisfied that the offence has been committed. The authority



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above mentioned can pass such confiscation orders even during the pendency of the case. So the order passed by the Magistrate, directing the Prohibition officer to initiate the confiscation proceedings, cannot be construed as an interim order in the special context of the procedure laid down under Section 14 of the Tamil Nadu Prohibition Act, 1937. So I do not find any illegality in entertaining the revision filed by the respondent challenging the order of the Magistrate.

9. However, it is to be noted that the impugned order passed in the revision petition is for interim custody and that is an interim order. However, it is learnt that in pursuance of the confiscation proceedings already initiated, the vehicle was brought for public auction and the auction proceedings have been completed. In view of the same, the issue involved in this case has become infructuous. Hence, this petition is closed as infructuous. Consequently, connected miscellaneous petition is also closed.

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Index:yes/No  
Speaking order / Non speaking order

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**R.N.MANJULA,J.**

vum

**To**  
The Public Prosecutor  
Madras High Court, Chennai.

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