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Crl.R.C.No.888 of 2014

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D.BHARATHA CHAKRAVARTHY, J.

Today this matter is listed under the caption “for being mentioned”.

2.It is brought to the notice of this Court that the ‘date of reserving orders’ mentioned in the order copy as ‘05.01.2021’ instead of ‘05.01.2022’. Therefore, Registry is directed to carry out the aforesaid correction and issue fresh order copy to the parties concerned.

14.10.2022

klt

Note:-

Registry is directed to make necessary correction and issue fresh order copy.



Crl.R.C.No.888 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 05.01.2021

Order Pronounced on : **11.01.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.888 of 2014

Suresan

.. Petitioner

Versus

The Superintendent of Police,
Coimbatore District,
Coimbatore.

.. Respondent

Prayer : Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records pertaining to the order passed in C.A.No.334 of 2012 on the file of the learned Principal District/Sessions Judge, Coimbatore, dated 21.04.2014 against the order in C.No.04/ADSP/PEW/CBE/2012, dated 26.11.2012 and set aside the order of remand alone, by allowing this Criminal Revision Petition.



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CrI.R.C.No.888 of 2014

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.L.Baskaran
Government Advocate
(Criminal Side)

ORDER

The Revision :

This Criminal Revision Case in CrI.R.C.No. 888 of 2014 is filed against the order of the learned Principal District & Sessions Judge, Coimbatore, dated 21.04.2014 in C.A.No.334 of 2012, in as much it remands the matter again to the respondent/Superintendent of Police, Coimbatore, for passing orders afresh under Section 14 (4) of the Tamilnadu Prohibition Act, 1937(hereinafter referred to as 'the Act'), with respect to confiscation of the petitioner's car bearing registration No. TN 38 BC 1503, by following the due procedures of affording proper opportunity of hearing and an opportunity to pay the market value of the vehicle in lieu of confiscation.

Brief Facts Leading to the Revision :

2. On 13.01.2002, a case in Cr.No. 48 of 2012, was registered by the Inspector of Police, Prohibition Enforcement Wing, Avinashi under Sections 4(1)(aaa), 4(1)(a) & 7 (12) of Tamilnadu Prohibition Act, 1937 read with Rule 567 of Tamilnadu Rectified Spirit Rules, 2000. In the course of the investigation, on



Crl.R.C.No.888 of 2014

21.01.2012, the petitioner's vehicle, being Maruti Suzuki Swift Car, bearing registration No.TN 38 BC 1503 was seized along with 35 liters empty white cans and the petitioner was arrested and remanded to judicial custody.

3. When the petitioner filed Crl.M.P.No.1898 of 2012 for return of the vehicle, proceeding were initiated under Section 14 (4) of the Act and the respondent passed an order confiscating the car on 18.04.2012. The petitioner filed appeal before the learned Principal Sessions Judge, Coimbatore and by order dated 10.09.2012, the Appellate Court found that the respondent (i) did not afford an opportunity of hearing; (ii) did not provide an opportunity to pay the value of the vehicle in lieu of confiscation and therefore, set aside the order of the confiscation and remanded the matter back to the respondent.

4. In compliance of the order in the appeal, a show cause notice was issued on 09.10.2012 and the petitioner appeared before the respondent and submitted his explanation. However, without affording an opportunity to pay the value of the vehicle, once again an order of confiscation was passed on 26.11.2012 and therefore, the petitioner filed the present Crl.A.No.334 of 2012, in which an order is passed setting aside the confiscation order, however, once again remanding the



matter back to the respondent for passing fresh orders. Aggrieved by the same, the petitioner has preferred this revision.

Submissions made in this Revision:

5. Mr.*R.Marudachalamurthy*, the learned Counsel appearing on behalf of the petitioner, would draw the attention of this Court first to the judgment of the learned Judicial Magistrate No.II, Coimbatore, dated 28.07.2017 in C.C.No.1013 of 2012, stating that a charge sheet has been filed in the present case in Cr.No.48 of 2012 and after trial, the accused were acquitted, including the petitioner who was prosecuted as accused No.7 in the case. However, in view of the judgment of this Court in *Natarajan Vs. State*¹, he would concede that mere acquittal of the case would not have any bearing on the confiscation proceedings. But, however, his contention is that when an opportunity was earlier granted by the Appellate Court to pass order by following the due process of law and when the authority has failed to follow the due procedure, the Appellate Court erred in remanding the matter back to the respondent again. He would rely upon a judgment of this Court in *Saravanan Vs. The Additional Superintendent of Police & Another* (Judgment, dated 30.11.2021 in Crl.O.P.No.22539 of 2017) in support of his contention that the vehicle should have been ordered to be released to the

¹ 1997 MLJ (Cri) 705



CrI.R.C.No.888 of 2014

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6. Opposing the said submission, Mr.*L.Baskaran*, the learned Government Advocate (Criminal Side) would submit that the respondent is ready to rectify the procedural violation and they have valued the vehicle at the earliest point of time itself and as a matter of fact, after the passing for the impugned order of confiscation a separate final order, dated 30.11.2012 was passed affording an opportunity for the petitioner to pay the sum of Rs.3,50,000/-, being the market value of the vehicle and 14.5% tax and costs of Rs. 50,750/- . But, however, the same was not brought to the notice of the Appellate Court. Therefore, they are ready and willing to comply with the order of remand.

The Point for Consideration:

7. Now, the question that arises for consideration is that whether the order of remand by the Appellate Court is sustainable. This court had in the matter of *The Secretary to Government Vs. Subam Auto Finance*², has held that the similar provision under the Forest Act, is *Quasi-Judicial* in nature, by following the Judgment of the Hon'ble Supreme Court of India in *Divisional Forest Officer and*

² AIR 2008 (NOC) 1052 (Mad.)



Ors. Vs. G.V. Sudhakar Rao and Ors.³. A reading of Section 14(4) of the Act

would clearly demonstrate that the same is also a quasi judicial power conferred on the authority, as different from the power of forfeiture granted to the Court upon conviction. The power is to be exercised on the subjective satisfaction of the authority. Thus, when the appellate authority finds violation of principles of natural justice or violation of due procedure, remanding the matter back to the original authority for complying the procedure violation is the correct way of interdiction and thus the Appellate Court has not committed any error in law. As a matter of fact, though the Judgment cited by the Learned Counsel for the petitioner in **Saravanan Vs. The Additional Superintendent of Police & Another** (Judgment dated 30/11/2021 in Crl.O.P. No. 22539 of 2017), had allowed the quash application under Section 482 of the Code of Criminal Procedure Code without remanding the matter back, the said judgment does not in deal with the question as to whether remand is correct or not.

8. But however, I am inclined to interfere in the order of remand for the sheer efflux of time and condition of the vehicle as on date. It may be seen that 10 years have elapsed since the date of seizure. The vehicle is standing at the Police station premises and has only a scrap value now. However, by following the

³ AIR 1986 SC 326



proviso to Section 14(4) the market value on the date confiscation is ascertained at

Rs. 3,50,000/- and now to direct the petitioner to pay the same after 10 years of time would cause prejudice to him. The Learned Counsel for the petitioner also submits that the petitioner wants to carry back the vehicle in 'as is where is condition' only to keep the records straight and will not in any manner make any claim whatsoever regarding the condition of the vehicle. The object behind the proviso itself is to salvage the vehicle from entropy, which is already lost. In this view of the matter, allowing the authority to pass fresh orders at this stage would result in miscarriage of justice. Hence, the Order of the Appellate Authority needs modification.

The result :

9. In the result:

(i) the Order of the Learned Principal Sessions Judge, Coimbatore dated 21/04/2014 in C.A. No.334 of 2012, in as much it remands the matter again to the Respondent / Superintendent of Police, Coimbatore, for passing orders afresh under Section 14 (4) of the Tamilnadu Prohibition Act, 1937 is set aside;

(ii) the petitioner is entitled to the return of the vehicle being Maruti Swift car bearing registration No. TN 38 BC 1503, as the order of acquittal in C.C. No. 1013 of 2012 has become final;



CrI.R.C.No.888 of 2014

(iii) the respondent is directed to entrust the custody of said vehicle to

directly to the petitioner upon production of the copy of this order.

10. The Criminal revision stands allowed accordingly. Consequently,
M.P.No.1 of 2014 is closed.

11.01.2022

Index : yes
Speaking order
grs

To

1.The Principal District-cum-Sessions Judge, Coimbatore.

2.The Public Prosecutor,
High Court of Madras.

4.The Superintendent of Police,
Coimbatore District,
Coimbatore.



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Crl.R.C.No.888 of 2014

D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery order in
Crl.R.C.No.888 of 2014

11.01.2022