



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.02.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

WEB COPY

Writ Petition (MD) No.2796 of 2022

Vijayamuthu, S/o.Muthaiah

.. Petitioner

Versus

1. The Superintendent of Police,
Office of the Superintendent of Police,
Virudhunagar District.

2.The Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 04.02.2022 immediately and release his Honda Activa Scooter bearing Registration No.TN-84-C-9276, seized on 27.08.2021, pertaining to the case in Crime No.81 of 2021, on the file of the second respondent Police and hand over to the petitioner.

For Petitioner : Mr.D.S.Haroon Rasheed

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

This Writ Petition has been filed for a Mandamus to direct the respondents to consider the petitioner's representation, dated 04.02.2022, and immediately release Honda Activa Scooter, bearing Registration No.TN-84-C-9276, seized on 27.08.2021, in Crime No.81 of 2021.

2.The case of the petitioner is that the petitioner's father viz., Kochadai @ Muthaiah was found carrying liquor bottles and certain other poisonous drugs in the Vehicle and therefore, the said Vehicle was seized on 27.08.2021.

3.The learned counsel for the petitioner submits that the Vehicle belongs to the petitioner and that the petitioner's father also died on 24.11.2021. Since the petitioner's father died, the



criminal case registered against him would abate and therefore, the petitioner is entitled for release of the said Vehicle.

4. In this connection, the learned counsel for the petitioner has placed reliance on the order of this Court, **dated 21.01.2021**, made in **W.P. (MD) No. 837 of 2021** [Ganesan Vs. The Additional Superintendent of Police, Prohibition Enforcement Wing, Sivagangai, Sivagangai District and another].

5. Opposing the prayer, the learned Special Government Pleader appearing for the respondents would submit that neither the petitioner's father nor the petitioner are the registered owner of the above said Vehicle. It is submitted that the above said Vehicle is in the name of one Neelamega Pandian and that the said Neelamega Pandian was issued with notice on 15.11.2021, which was received by him on 26.11.2021 under Section 14 of the Tamil Nadu Prohibition Act, 1937 [hereinafter referred to as 'the TNP Act']. It is submitted that the said Neelamega Pandian has also given explanation on 26.11.2021 stating that the Vehicle has been sold three years back and he is not concerned with the Vehicle and the respondents are at liberty to proceed with the seized Vehicle in accordance with law. The learned Special Government Pleader for the respondents would further submit that a final order has been passed by the Deputy Superintendent of Police, Prohibition and Excise Wing, bearing ந.க.எண்.37-2/கா.து.க/ம.வி.அ.பி/வி.மா/2021, dated 11.12.2021.

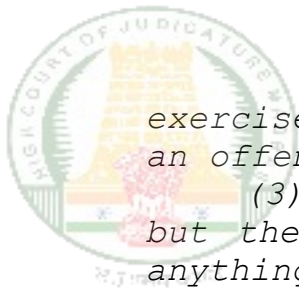
6. The learned Special Government Pleader appearing for the respondents would further submit that it is open to the petitioner to file an appeal against the above said order under Section 14(5) of the TNP Act before the Sessions Court.

7. I have heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents and perused the provisions of the TNP Act, particularly, Sections 14, 51 and 53 of the said Act. Section 14 of the TNP Act prescribes the method for ordering confiscation of Vehicle. The said Section reads as under:-

'14. Confiscation how ordered.- (1) When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the court decides that anything is liable to confiscation, such confiscation shall be ordered by the court.

(2) Where, during the trial of a case for an offence against this Act, the court decides that anything is liable to confiscation, the court shall order the confiscation;

Provided that no animal, vessel, cart or other vehicle shall be confiscated under sub-section (1), or sub-section (2), if the Court after hearing the owner of such animal, vessel, cart or other vehicle and any person claiming any right thereto, is satisfied that the owner and such person had



exercised due care in the prevention of the commission of such an offence.

(3) When an offence against this Act has been committed but the offender is not known, or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector or other Prohibition Officer-in-charge of the district or by any other officer authorised by the State Government in that behalf who shall order such confiscation;

Provided that no such order shall be made until the expiration of fifteen days from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which they produce in support of their claims.

(4) Notwithstanding anything contained in sub-sections (1) to (3), the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given-

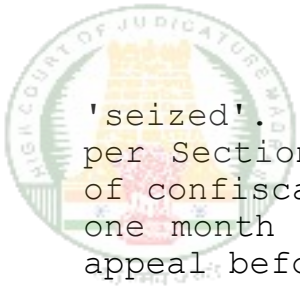
(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle:

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter:

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.

(5) Any person aggrieved by an order of confiscation under sub-section (4) may, within one month from the date of the receipt of such order, appeal to the Court of Sessions having jurisdiction.''



'seized'. These provisions are relevant only for confiscation. As per Section 14(5) of the TNP Act, any person aggrieved by an order of confiscation under sub-section 4 of Section 14 of the Act, within one month from the date of receipt of the said order, can file an appeal before the Court of Sessions having jurisdiction.

WEB COPY

9. At this juncture, it is relevant to quote below Section 51 of the TNP Act.

'51. Police to take charge of articles seized.- All officers in-charge of police stations shall take charge of and keep in safe custody pending the orders of a Magistrate or of a Prohibition Officer, all articles seized under this Act which may be delivered to them; and shall allow any Prohibition Officer who may accompany such articles to the police station, or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in-charge of the police station.'

Thus, the custody of the seized vehicle till confiscation is ordered is to remain in the Police custody as per Section 51 of the TNP Act.

10. As per Section 53 of the TNP Act, nothing contained in the TNP Act shall affect the operation of the Code of Criminal Procedure, 1973 save as expressly provided under the Act. Thus, the provisions of Code of Criminal Procedure are applicable to the seized vehicle also. Chapter XXXIV of Code of Criminal Procedure deals with disposal of property.

11. As per Section 457 of the Code of Criminal Procedure, whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of the Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

12. An elaborate procedure has been prescribed under the Code of Criminal Procedure, as it is evident from the reading of Chapter XXXIV to Code of Criminal Procedure.

13. The option to approach the Judicial Magistrate Court is available to the petitioner till the time the vehicle is under seizure. The Deputy Superintendent of Police, Prohibition and Excise Wing, has ordered confiscation by order dated 11.12.2021, by giving notice to the registered owner of the vehicle Neelamega Pandian who has admittedly stated that the said vehicle has been



sold by him long back and he has nothing to do with the above said vehicle.

14.The second respondent is also aware of the fact that the seized vehicle was taken from the possession of the petitioner's father on 27.08.2021. As far as the confiscation order dated 11.12.2021 is concerned, it is *non est* in law inasmuch as the notice dated 15.11.2021, was issued to the said Neelamega Pandian and not to the petitioner's father or to the petitioner's family and the petitioner's father also passed away on 24.11.2021.

15.Considering the fact that confiscation order dated 11.12.2021 is *non est* and not binding on the petitioner, this Court gives liberty to the petitioner to work out his remedy in terms of Section 51 read with Section 53 of the TNP Act and the provisions of the Code of Criminal Procedure as made applicable to the proceedings under the TNP Act. If the petitioner files an appropriate application in terms of the above provision of the TNP Act, the authority concerned shall consider the petitioner's application and dispose it in accordance with law.

16.For the above reasons stated above, I am not inclined to follow the order dated 21.01.2021, passed in W.P.(MD)No.837 of 2021, as there is no reference to the procedure to be followed under the TNP Act, but merely grants the relief.

17.This Writ Petition is disposed of with the above observation. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn2

To

1. The Superintendent of Police,
Office of the Superintendent of Police,
Virudhunagar District.

2.The Inspector of Police,
Nathampatti Police Station, Virudhunagar District.

+1 CC to M/s.SPL GP (SR-5897[F] dated 14/02/2022)

WP (MD) No.2796 of 2022
11.02.2022

RD(25.02.2022) 5P 4C

<https://hcservices.ecourts.gov.in/hcservices/>