



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.4701 of 2021
and
W.M.P(MD).No.4271 of 2022

Venkatesh

... Petitioner

Vs.

1.The Superintendent of Police,
Dindigul District, Dindigul.

2.The Deputy Superintendent of Police,
Prohibition and Enforcement Wing,
Dindigul, Dindigul District.

3.The Inspector of Police,
Oddanchatram Police Station,
Dindigul District.
(Crime No.438 of 2020)

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to release the petitioner's vehicle (Ford Figo Aspire Car) bearing Registration No.TN 57 AP 2387.

For Petitioner : Mr.K.Elangovan

For Respondents : Mr.M.Prakash

Additional Government Pleader

ORDER

This writ petition has been filed for a writ of Mandamus to direct the respondents to release the petitioner's vehicle (Ford Figo Aspire Car) bearing Registration No.TN 57 AP 2387.

2. It is the specific case of the petitioner that he handed over the vehicle to his brother on hire basis and that liquor bottles were carried in the said vehicle and therefore, FIR came to be lodged in Crime No.438 of 2020 for the alleged offence under Section 4 (1) (a) of the Tamil Nadu Prohibition Act, 1937 by the third respondent. It is the case of the petitioner that the petitioner is not an accused and that he was not aware of the fact that his vehicle was used for illegal purpose.



3. It is submitted that the petitioner is an innocent person and he was being unnecessarily arrested, as his vehicle was seized by the third respondent for carrying liquor bottles.

4. The learned counsel for the petitioner has relied on the decision of this Court, rendered in W.P.(MD).No.10298 of 2020 vide order, dated 28.08.2020. The learned counsel for the petitioner submits that under a some what similar circumstances, the learned Single Judge of this Court followed the earlier order in W.P.(MD).No.2679 of 2020 in the case of **Sathiah Vs Tamil Nadu Commissioner Secretary, Prohibition and Excise Department**, vide order dated 09.07.2020, wherein, this Court had directed the respondents to produce the vehicle before the jurisdictional Magistrate without any further delay and upon such production, it is open for the petitioner to apply for return of vehicle under Section 251 Cr.P.C. The learned counsel for the petitioner submits that while disposing W.P.(MD).No.10298 of 2020 on 28.08.2020, such conditions were imposed and the same conditions may be allowed.

5. Opposing the prayer, learned Additional Government Pleader for the respondents submits that the petitioner has to work out remedy before the Magistrate Court before whom the vehicle has to be produced.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

7. Recently, this Court has considered the provisions of Tamil Nadu Prohibition Act, 1937 and the provisions of Criminal Procedure Code in W.P.(MD).No.2796 of 2022, dated 11.02.2022 (**Vijayamuthu Vs The Superintendent of Police, Virudhunagar District and others**). The operative portion of the order reads as under:

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



(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.''

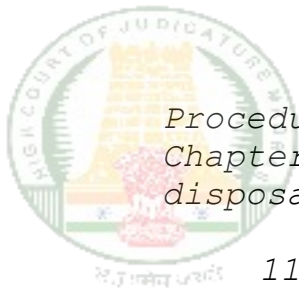
8.The proviso to sub-clause 3 and the proviso to sub-clause 4 of Section 14 of the TNP Act, use the expression 'seizing' and 'seized'. These provisions are relevant only for confiscation. As per Section 14(5) of the TNP Act, any person aggrieved by an order of confiscation under sub-section 4 of Section 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.

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.

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

8. As per the aforesaid order, the petitioner has to work out appropriate remedy before the Magistrate Court by filing appropriate application for return of the vehicle. Therefore, I do not find any merit in the writ petition as the petitioner has an alternate remedy before the Magistrate Court. Therefore, the petitioner is given liberty to approach the Magistrate Court and workout appropriate remedy in accordance with law.

9. The Writ petition stands disposed of with the above observations. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1. The Superintendent of Police,
Dindigul District, Dindigul.

2. The Deputy Superintendent of Police,
Prohibition and Enforcement Wing,
Dindigul, Dindigul District.

3. The Inspector of Police,
Oddanchatram Police Station,
Dindigul District.

+1 CC to M/s.K.ELANGO VAN, Advocate (SR-11231[F] dated 10/03/2022)

+1 CC to M/s.SPL GP (SR-11538[F] dated 11/03/2022)

W.P(MD) .No.4701 of 2021
09.03.2022

CK(CO)

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