



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.8275 of 2022

and

W.M.P(MD).Nos.6156 and 6157 of 2022

Kumar

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by the Superintendent of Police,
Trichy District, Trichy.
- 2.The Deputy Superintendent of Police (PEW),
Prohibition Enforcement Wing,
Musiri,
Trichy District.
- 3.C.Mutharasu
I/C. The Deputy Superintendent of Police (PEW),
Prohibition Enforcement Wing,
Musiri,
Trichy District.
- 4.The Inspector of Police,
Jambunadhapuram Police Station,
Jambunadhapuram,
Trichy District.
(FIR in Crime No.4 of 2022)

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire record pertaining to the impugned notice in Na.Ka.No.22/து.கா.க.ம.வி.அ.பி/திரு/22 dated 23.03.2022 and impugned proceedings in Na.Ka.No.65/Confisen/DSP/PEW/TRI/22 dated 07.04.2022, issued by the second respondent and quash the same as illegal and consequently direct the second respondent to produce petitioner's vehicle bearing Registration No. TN-48-AT-7657 (Royal Enfield) before Judicial Magistrate, Thuraiyur in FIR in Crime No.4 of 2022.

For Petitioner : Mr.P.M.Vishnuvarthanan
For R1, R2 & R4 : Mr.K.S.Selva Ganesan
Additional Government Pleader

**ORDER**

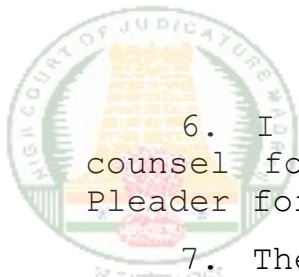
Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1, 2 and 4.

2. The petitioner has challenged the impugned order passed by the second respondent/Deputy Superintendent of Police.

3. It is the specific case of the petitioner that the TASMAL's bar is situated in petitioner's land and he has been subjected to harassment by the second respondent. It is further submitted that the second respondent is not a competent authority in terms of Section 14 (4) of the Tamil Nadu Prohibition Act, 1937. According to the petitioner, only a Sub-Collector or District Collector or any person who is authorised, competent to initiate proceedings under the provisions of the Act for alleged violation of Section 4 (1) (a), 4 (1) (i) read with Section 4 (1-A) of the Tamil Nadu Prohibition Act, 1937.

4. The learned counsel for the petitioner has also referred to G.O.Ms.No.14, Home, Prohibition and Excise (VI), wherein, it has been stated that as far as Indian Made Foreign Spirit, a person can carry up to 4.5 litres. In this case, admittedly, the petitioner was carrying only nine bottles of Mens Club Brandy of 180 ml each. Therefore, the quantity that was allegedly carried by the petitioner was for below the quantity that has been permitted as per the aforesaid G.O. It is further submitted that repeatedly the petitioner has been harassed and issued with a show cause notice and petitioner had earlier paid fine. However, on this occasion, the petitioner had failed to reply to the show cause notice, dated 23.03.2022, knowing fully well that the petitioner was victimised. It is submitted that the impugned order is unsustainable as it is in violation of Section 14 (4) of the Tamil Nadu Prohibition Act, 1937 and G.O.Ms.No.14, Home, Prohibition and Excise (VI).

5. Opposing the prayer, the learned Additional Government Pleader for the respondents 1, 2 and 4 submits that the petitioner is a habitual offender and therefore, the petitioner's vehicle was seized and ordered to be confiscated by the impugned order, dated 07.04.2022. It is further submitted that the impugned order preceded the show cause notice, dated 23.03.2022 which called upon the petitioner to pay the amount and take the vehicle. However, the petitioner failed to reply to the same and therefore, the impugned order has been passed. It is further submitted that the impugned order that has been passed is well reasoned and therefore requires no further interference. That apart, it is submitted that the petitioner has an alternate remedy under Section 14 (5) of the Tamil Nadu Prohibition Act, 1937 before the Court of Session having jurisdiction. Therefore, the writ petition is liable to be dismissed.



6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1, 2 and 4.

7. The petitioner has not replied to the show cause notice, dated 23.03.2022 as a result of which the impugned order, dated 07.04.2022 has been passed by the second respondent. Section 14 (5) of the Tamil Nadu Prohibition Act contemplates the appellate remedy against the order passed under Section 14 (4) of the Tamil Nadu Prohibition Act.

8. Considering the fact that there is a misgiving and mutual suspicion between the petitioner and the second respondent, I am inclined to dispose this writ petition by permitting the petitioner to file statutory appeal under Section 14 (5) of the Tamil Nadu Prohibition Act, 1937 within a period of 30 days from the date of receipt of copy of this order. If such appeal is filed by the petitioner, the appellate Commissioner shall consider the appeal and pass appropriate orders on merits and in accordance with law taking note of the G.O.Ms.No.14, Home, Prohibition and Excise (VI). All further proceedings pursuant to the impugned order shall be kept in abeyance pending disposal of such appeal filed by the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Superintendent of Police,
The State of Tamil Nadu,
Trichy District, Trichy.
- 2.The Deputy Superintendent of Police (PEW),
Prohibition Enforcement Wing,
Musiri,
Trichy District.
- 3.The Inspector of Police,
Jambunadhapuram Police Station,
Jambunadhapuram,
Trichy District.



W.P(MD).No.8275 of 2022

+1 CC to M/s.P.M. VISHNUVARTHANAN, Advocate (SR-21797[F] dated 27/04/2022)

+1 CC to M/s.SPL.GP. (SR-22104[F] dated 28/04/2022)

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SG (CO)

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