



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P. (MD)No.11485 of 2022

and

W.M.P (MD) .No.8148 of 2022

WEB COPY

T.Kalimuthu

... Petitioner

Vs

1.The Deputy Superintendent of Police,  
Prohibition Enforcement Division,  
Ramanathapuram District.  
(Crime No.50/2022)

2.The Inspector of Police,  
Thondi Police Station,  
Ramanathapuram.  
(Crime No.50/2022)

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the first respondent in ந.க.எண்.18-1/ பறிமுதல்/து.கா.க/ம.வி அ.பி./இராம/2022 dated 12.04.2022 and quash the same as illegal, arbitrary and violation of Act and direct the first respondent to release the unregistered Hero Honda Splendor motor bike which was seized by the second respondent in Crime No.50/2022.

For Petitioner

: Mr.KA.Raamakrishnan

For Respondents

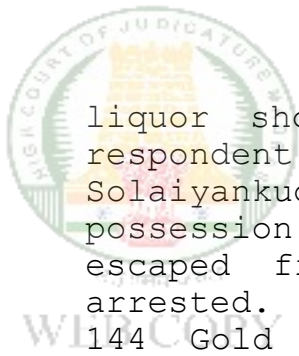
: Mr.S.Kameswaran

Government Pleader

### **ORDER**

The petitioner is the owner of an unregistered Hero Honda Splendor motor bike, which was seized in connection with the case in Crime No.50 of 2022 and the seizure order has been passed by the first respondent. On 12.04.2022, confiscation notice under Tamilnadu Prohibition Act issued, against which, the present writ petition filed.

2.The case of the petitioner is that the petitioner purchased the Hero Honda Splendor motor bike only on 16.02.2022 out of his hard-earned money, the registration number is yet to be assigned. While so, on 17.02.2022, a case is projected showing that when the second respondent police was on a patrol duty, they received information that the petitioner along with other persons were selling brandy at a higher rate taking advantage of the closure of



liquor shop due to the local body election. When the second respondent along with his team went near the Rajiv Gandhi Hotel, Solaiyankudi, the petitioner along with another person was found in possession of brandy bottles. On seeing the police, the other person escaped from the scene of occurrence and the petitioner was arrested. On his confession, 336 Accord brandy bottles and 144 Gold brandy bottles, each 180 ml along with a cash of Rs.12,110/- were seized and registered a case against the petitioner in Crime No.50 of 2022 under Section 4(1)(a), (aa), (i) of Tamilnadu Prohibition Act. Thereafter, the petitioner was remanded to judicial custody and he got bail.

3.The further case of the petitioner is that after registering the case, the second respondent submitted the records before the first respondent to confiscate the above unregistered Hero Honda Splendor bike. The first respondent initiated the confiscation proceedings, issued show cause notice to the petitioner on 24.03.2022 giving seven days for him to reply. Thereafter, the petitioner approached the first respondent, made his objection that a false case foisted against him. However, the first respondent failed to hear the same. On 12.04.2022, notice served to the petitioner for confiscating the vehicle. Hence, the petitioner has filed the present petition.

4.The learned counsel for the petitioner submitted that the impugned order passed by the first respondent under Section 14(4) of the Tamilnadu Prohibition Act is not proper. The confiscation how to be ordered is stated in Section 14(4) (ii), wherein, it is clearly stated that an opportunity of making a representation in writing within a period, not exceeding 14 days to be given. In this case, admittedly, seven days notice time given to the petitioner for making his objection. Likewise, as per Section 14(4) (iii) of the Act, a reasonable opportunity of being heard in the matter has also to be given. In this case, no such personal hearing was given and petitioner heard. Further it states that in lieu of confiscation, the market price of the vehicle is to be disclosed, so that the petitioner can have the right of claiming his property. These statutory condition not complied by the first respondent, being the superior officer of the second respondent. Without following the procedure, he had passed the impugned order. In support of his contention, petitioner relied upon the decision of this Court in the case of **Saravanan Vs the Additional Superintendent of Police and another** reported in **2022-1-L.W (crl) 115**.

5.The learned counsel for the petitioner further submitted that from the First Information Report, it is seen that there is nothing to show that the liquor bottles were transported or stored in the motor bike. It is only stated that the petitioner was standing near the bike. To suit the case, a confession recorded as few bottles



were seized from the side box of the petitioner's bike, which is an improvement made to justify the seizure of the vehicle.

6.The learned counsel for the petitioner further submitted that the petitioner, out of his hard earned money, purchased the vehicle on 16.04.2022 and on the very next day itself, even before he could have the pleasure of using the vehicle, the vehicle seized. He further submitted that the petitioner is under apprehension if he approaches the Magistrate Court for seeking return of property, the second respondent police will state that confiscation proceedings is pending, and the Magistrate Court will not entertain his petition. Now, the vehicle is under the custody of the second respondent from 17.02.2022. If the vehicle is kept in open space exposing to vagaries of weather, the value of the vehicle will get diminished, further detention will make the motorbike, unusable. In view of the same, he seeks necessary direction to be issued to the Magistrate Court to entertain the petition to return the vehicle.

7.The learned Government Advocate appearing for the respondent submitted that the petitioner was arrested in the scene of occurrence and on his confession, 480 bottles of brandy seized from the scene of occurrence. Since there was no public witnesses, the seizure was made in the presence of the four police personnel and the seized property along with motor bike were produced to the concerned Magistrate Court immediately, without delay. He further submitted that the petitioner has used the vehicle for transporting the liquor bottles as well as he used the side box of the bike to store the same. Admittedly, on 17.02.2022, all the wine shops were closed on that day. The petitioner, taking advantage of the same, stocked the liquor bottles and sold it in the black market. Hence, he committed the offence under the Tamilnadu Prohibition Act. The investigation is in progress and the final report is yet to be filed. In the meanwhile, by following the Prohibition Act, the vehicle brought for confiscation. The petitioner is a regular offender and he is involved in similar kind of offences and the same is pending trial. Hence, he strongly opposed this petition.

8.Considering the submission and on perusal of the materials, it is seen that admittedly, the petitioner purchased the vehicle on 16.02.2022. The vehicle is yet to be assigned with registration number. On the very next day (i.e.,) 17.02.2022, the vehicle seized. On going through the FIR, it is further seen that nowhere it is mentioned that the vehicle was used for transportation and stocking of liquor bottles. However, in the confession statement, it is mentioned that brandy bottles were stored in the side box of the vehicle. Be that as it may, as regards the confiscation proceedings, Section 14 (4)(ii)(iii) of the Act as well as the proviso to Section 14 of the Act giving option to pay the confiscated amount, is not followed, which is a gross violation as per the Act.



9. In view of the same, this Court is inclined to quash the notice, dated 24.03.2022 passed in ந.க.எண்.18-1/ பறிமுதல்/து.கா.க/ம.வி அ.பி./இராம/2022 as well as the Confiscation Order, dated 12.04.2022 passed in ந.க.எண்.18-1/ பறிமுதல்/து.கா.க/ம.வி அ.பி./இராம/2022 by the first respondent herein. The first respondent police is directed to issue a fresh notice by following the procedure as contemplated under the Tamil Nadu Prohibition Act to the petitioner and thereafter, proceed in accordance with law. Further, it is made clear that the pendency of confiscation proceedings would in no way curtail the right of the Judicial Magistrate to entertain the petition for returning the vehicle to the petitioner. The only condition is that subject to the outcome of the confiscation proceedings, the vehicle can be returned to the petitioner. In view of the same, the concerned Judicial Magistrate is directed to entertain the petition for return of property and pass appropriate orders in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

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To:-

- 1.The Chief Judicial Magistrate,  
Ramanathapuram
- 2.The Judicial Magistrate,  
Thiruvadanai, Ramanathapuram District.
- 3.The Deputy Superintendent of Police,  
Prohibition Enforcement Division,  
Ramanathapuram District.
- 4.The Inspector of Police,  
Thondi Police Station, Ramanathapuram.
- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.KA. RAAMAKRISHNAN, Advocate ( SR-25798[F]  
dated 15/06/2022 )

+1 CC to M/s.SPL.GP. ( SR-25573[F] dated 14/06/2022 )

**W.P. (MD)No.11485 of 2022**

**13.06.2022**

**nsn** (CO) GC (04.07.2022) 4P 8C

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