



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2022

CORAM:

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

W.P. (MD) No. 11941 of 2022

Edwin Arockiadoss

.. Petitioner

Vs

1. The Superintendent of Police
Tiruchirapalli District, Tiruchirapalli.

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

3. The Inspector of Police
Manapparari Police Station,
Trichy District

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the third respondent to release the petitioner's two wheeler TVSXL 100 HD bearing Reg.No. TN 45 BT 9459 having Engine No. CP1CK1903939 and chasis No. MD621HP10K1C03773 which is under the custody of the third respondent since 22.01.2022

For Petitioner

: Mr. A. Lourdu Raj

For Respondents

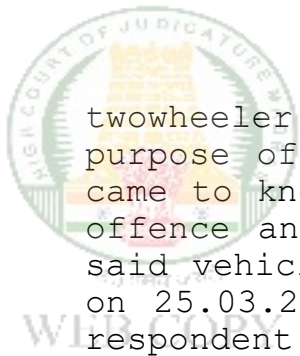
: Mr. C. Satheesh

Government Advocate

ORDER

This writ petition has been filed to direct the third respondent to release the petitioner's two wheeler TVS XL 100 HD bearing Reg.No. TN-45-BD-9459 which is under the custody of the third respondent since 22.01.2022 in connection with the case in Crime No. 20 of 2022 for the offences under Section 4(1)(a) and 4(1-A) of TNP Act.

2. The case of the petitioner is that on 22.01.2022, the third respondent conducted raid near Sevallur Division and found a motorcycle loaded with gunny bag and when the same was stopped and questioned, one Ramesh informed that on the next day on 23.01.2022 due to corona restriction, wine shops closed and for that purpose, he had purchased 90 Nos. Of 180 ml quarter bottles along with his friend Nelson from one Marappan, who is the salesman at shop No. 10561. Thereafter, the respondent police seized the vehicle and the contraband and the petitioner was arrested and remanded to judicial custody. The contraband was seized in the presence of police witnesses. Thereafter, they were produced before the learned Judicial Magistrate, Manapparai. The petitioner had given his



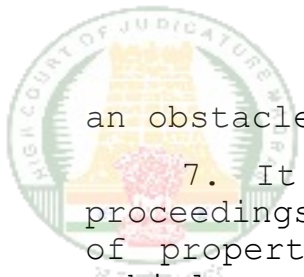
two-wheeler to his friend Nelson Raj for his urgent need for the purpose of buying cattle feed. After few days only, the petitioner came to know that the said vehicle was involved in the prohibition offence and the vehicle was seized by the respondent police. The said vehicle was not produced before the Magistrate Court. Suddenly on 25.03.2022, the said Nelson Raj was given notice by the second respondent calling upon him to give reply as to why the vehicle not confiscated.

3. On coming to know about the same, the petitioner had sent reply dated 29.04.2022 giving details about the case and also the petitioner's vehicle has been wrongfully detained by the second respondent. Along with the representation, he has also sent Registration Certificate, Aadhar card and other particulars to the respondents. Even thereafter, the respondent police not informed about the progress of the proceedings. Hence, he has filed the present petition.

4. The vehicle of the petitioner is involved in a prohibition offence and a case has been registered in Crime No. 20 of 2022 for the offences under Sections 4(1)(a) and 4(1-A) of TNP Act. The petitioner's vehicle has been seized and as per the provision of the TNP Act, the vehicle has to be confiscated. The petitioner had not produced any statement and proof of service.

5. It is seen that the petitioner is the owner of the vehicle bearing Reg.No.TN-45-BT-9459, a two-wheeler which is seized by the third respondent. Admittedly, the petitioner is not an accused in this case. The representation has been given in person to the second respondent. Further, the second respondent not sent notice to the petitioner under Section 14 of the Tamil Nadu Prohibition Act, 1937. It is seen that the procedure contemplated under Section 14 of the Tamil Nadu Prohibition Act, 1937 not followed. The petitioner being the owner of the vehicle, notice ought to be given and opportunity of hearing should be given and thereafter only, any confiscation proceedings can be passed. In this case, admittedly, the petitioner is not an accused and no notice has been served on him.

6. In view of the same, the second respondent is directed to issue notice to the petitioner and hear the objection and thereafter, pass orders on merits and in accordance with law. Further, it is seen that the vehicle was seized on 22.01.2022 and the vehicle is kept in the open yard exposed to vagaries of weather conditions. Now, the value of the vehicle got diminished and further, keeping the vehicle in the open place, the vehicle will become unusable. In the event of the third respondent not producing the vehicle before the learned Judicial Magistrate, the vehicle to be produced before the learned Judicial Magistrate, Manaparai, immediately, petition for return of vehicle before the learned Judicial Magistrate to be filed who shall consider the same and pass orders accordingly. The pendency of confiscation proceedings is not



an obstacle to consider return of property petition.

7. It is also made clear that the pendency of confiscation proceedings will not deny the right of filing a petition for return of property and get the same. The only condition is that the vehicle can be handed over to the petitioner if he is otherwise eligible with a condition that is subjected to confiscation proceedings.

8. With the above direction, this Writ Petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

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To

1. The Superintendent of Police
Tiruchirapalli District, Tiruchirapalli.
2. The Deputy Superintendent of Police
Prohibition Enforcement Wing,
Tiruchirapalli District, Tiruchirapalli.
3. The Inspector of Police
Manapparari Police Station,
Trichy District

+1 CC to M/s.SPL.GP (SR-27111[F] dated 21/06/2022)

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MA (CO)

KB(29.06.2022) 3P 5C