

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.17229 of 2022
and
W.M.P(MD).No.12583 of 2022

Nagaraj

... Petitioner

Vs.

1.The Deputy Superintendent of Police,
PEW-Ramanathapuram Police Station,
Ramanathapuram,
Ramanathapuram District.

2.The Inspector of Police,
PEW-Ramanathapuram Police Station,
Ramanathapuram,
Ramanathapuram District.

...Respondents

(R1 *suo motu* amended vide Court order, dated
03.08.2022 in W.P(MD)No.17229 of 2022)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent in his proceedings 05-01/parimuthal/Thu.Kaa.Ka/Ma.Vi.Aa.Pi/Erama/2022, dated 22.03.2022 and quash the same as illegal, consequently, directing the first respondent to release Honda Shine SP bike bearing Registration No.TN-65-AH-4077 seized by the second respondent on 17.01.2022.

For Petitioner : Mr.M.Fernand
For Respondents : Mr.S.Kameswaran
Government Advocate

ORDER

The petitioner, who is owner of Honda Shine motor bike bearing Registration No.TN-65-AH-4077, challenged the confiscation order passed by the first respondent in 05-01/Parimuthal/Thu.Kaa.Ka/Ma.Vi.Aa.Pi/Erama/2022, dated 22.03.2022. The first respondent on 17.01.2022 conducted vehicle check in Maravettivalasai. On seeing that, the rider of the bike attempted to speed away. He was caught and enquired. He identified himself as Chandrasekar, son of Gurusamy and the first respondent found that he illegally transported 48 bottles of Honey Day brandy bottles. Hence, the said person was arrested and seized the liquor bottles and Honda Shine motor bike bearing Registration No.TN-65-AH-4077. Thereafter, a case in Crime No.58/2022 under Section 4 (1) (a) of TN Prohibition Act was registered against him and thereafter, following G.O.Ms.No.315/2004 initiated confiscation proceedings and made a request to the first respondent to take action.

2. The first respondent issued show cause notice to the petitioner on 23.02.2022 giving 7 days for him to reply. The petitioner sent reply on 07.03.2022 giving explanation that the petitioner was a Driver in State

Transport Corporation, Rameswaram. The petitioner was in duty on 17.01.2022. His relative namely, Chandrasekar came and informed the petitioner's wife, since he needs to take petitioner's bike for some urgent work. Later, petitioner knew that Chandrasekar took his bike and indulged in illegal activity. Though the petitioner sent a detailed reply, it was not considered and non-speaking cryptic order issued on 23.02.2022 for confiscating the vehicle. In this case, no personal hearing given. Further, in the event of confiscation and seizure, objection given by the owner of the bike. Hence, the petitioner prayed for quashing the order, dated 23.03.2022.

3. The learned Government Advocate for the respondents submits that the case in Crime No.58/2022 for offence under Section 4 (1) (a) of the TN Prohibition Act registered against Chandrasekar. They found that one Chandrasekar, son of Gurusamy, transported 48 bottles of Honey Day brandy bottles without any licence. The said person along with 48 brandy bottles and Honda Shine motor bike bearing Registration No.TN-65-AH-4077 was seized. Following G.O.Ms.315/2004, confiscation proceedings initiated. The first respondent issued show cause notice, dated 23.02.2022. The petitioner gave a reply. In his reply, he has not asked for any personal hearing. Considering the petitioner's reply, confiscation proceedings was completed on 22.03.2022. He further submitted that return of property petition before the

Judicial Magistrate-II, Ramanathapuram in C.M.P.No.544 of 2022 was filed and the same was dismissed on 16.04.2022. If the petitioner is aggrieved against the order of confiscation, the petitioner ought to have filed an appeal before the Sessions Court within one month. Hence, the respondents strongly oppose this petition.

4. Considering the submission and on perusal of the materials, it is seen that in this case, the petitioner is not an accused in Crime No.58/2022. Further, the vehicle bearing Registration No.TN-65-AH-4077 not involved in any other case previously. As per the explanation given by the petitioner, the petitioner is a Driver in the State Transport Corporation, Rameswaram. During the absence of the petitioner, his motor bike was taken by his relative for some urgent use, which is common, with no motive. Admittedly, in this case, there is no mention about the petitioner having knowledge about the accused, Chandrasekar. The case of the prosecution is that the accused, Chandrasekar with the knowledge of the petitioner committed the offence. These aspects are not considered and added to it, the petitioner was not given personal hearing as well as the action of redemption. The return of property petition before Judicial Magistrate No.II, Ramanathapuram dismissed on 16.04.2022 for the reason that already the vehicle was confiscated not on merits.

5. In view of the above, this Court finds that the order passed by the first respondent is not sustainable. Hence, the cryptic and non-speaking order without details and not following the statutory conditions, is hereby quashed. The petitioner is directed to file a petition seeking return of property before the Judicial Magistrate No.II, Ramanathapuram, who shall pass appropriate orders on merits. The impediment of confiscation no more exists.

6. It is mentioned that the first respondent is to be corrected as Deputy Superintendent of Police, PEW-Ramanathapuram Police Station, Ramanathapuram, Ramanathapuram District, instead of Additional Superintendent of Police, PEW-Ramanathapuram Police Station, Ramanathapuram, Ramanathapuram District, which was wrongly mentioned in the petition. Registry is directed to carry out necessary amendments in the cause title.

7. The contention of the petitioner is that from January 2022, for the past six months, the vehicle was kept in open exposing to rain and sun and the value of the vehicle is getting diminished day-by-day. In view of the same, the Judicial Magistrate No.II, Ramanathapuram, is directed to consider the petitioner's application for return of property and dispose of the same within a

period of two weeks from the date of receipt of copy of this order.

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

03.08.2022

Index : Yes / No
Internet : Yes/ No
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To

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M.NIRMAL KUMAR, J.

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