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W.P.(MD).No.3069 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD).No.3069 of 2018

and

W.M.P(MD)Nos.3225 to 3227 of 2018

Palanivelrajan

... Petitioner

Vs.

State rep by
The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Madurai.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to confiscation proceedings passed by the respondent in Na.Ka.No. 14-2/ADSP/PEW/MD/2017 dated 01.05.2017 which was confirmed by the learned 1st Additional District and Sessions Judge, Madurai in Crl.A.No. 52/2017 dated 19.08.2017 and quash the same and consequently, direct the respondent to release the vehicle Tata Indica Car bearing Reg. No.TN 58 R 2207 forthwith.

For Petitioner : Mr.N.Mohideen Basha

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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ORDER

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This writ petition has been filed challenging the order passed by the learned First Additional District and Sessions Judge, Madurai, in CrI.A.No.52 of 2017 dated 19.08.2017 confirming the confiscation order passed by the respondent through proceedings dated 01.05.2017.

2.The respondent initiated confiscation proceedings under Section 14 of the Tamil Nadu Prohibition Act, 1937 (hereinafter referred to as 'the Act' in short), for confiscating the car belonging to the petitioner. The respondent passed an order on 01.05.2017, confiscating the vehicle under Section 14(4) of the Act. Challenging the said order, the petitioner filed an appeal before the Sessions Court under Section 14(5) of the Act, and the same was dismissed and thereby the confiscation order was confirmed. Aggrieved by the same, the petitioner filed CrI.R.C(MD)No.718 of 2017 before this Court and this Court dismissed the said revision by an order dated 09.02.2018 on the ground of maintainability and granted liberty to the petitioner to file a writ petition. Accordingly, the present writ petition has been filed before this Court.



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3. Heard Mr.N.Mohideen Basha, learned counsel for the petitioner and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent.

4. The learned counsel for the petitioner, apart from raising various other grounds, mainly focussed his submission on two grounds. The first ground is that the respondent by passing the confiscation order did not give any reasons for satisfying himself that an offence was committed under the Act and that the vehicle was involved in the commission of the said offence. The second ground that was urged by the learned counsel for the petitioner is that Section 14(4) of the Act gives a discretion to the authority and it is not mandatory that the confiscation order has to be passed in every case. According to the learned counsel for the petitioner, this discretion has not been properly exercised by the respondent and straight-away the confiscation order was passed.

5. Per contra the learned Additional Public Prosecutor appearing on behalf of the respondent submitted that nearly 100 bottles of liquor was transported in the vehicle and that by itself is an offence under the Act and the vehicle belonging to the petitioner was used to commit such an offence



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and therefore, there is a valid ground for passing the confiscation order in this case. The learned Additional Public Prosecutor also questioned the attitude of the petitioner in not submitting the relevant documents and not participating at the time of enquiry, in spite of several opportunities given to the petitioner. In view of the same, the learned Additional Public Prosecutor submitted that there are absolutely no grounds to interfere with the confiscation order passed by the respondent and as confirmed in the appeal by the Sessions Court.

6.This Court has carefully considered the submissions made on either side and perused the materials available on record.

7.In the present case, the petitioner had filed a petition for return of vehicle before the learned Judicial Magistrate, Melur, under Section 451 of Cr.P.C., for return of vehicle, which was seized by the concerned police. While filing this petition, it is stated that the original RC Book was submitted before the Court. It was only due to this reason, the petitioner was not in a position to produce the original RC Book before the respondent during the confiscation proceedings. Yet another ground that was raised is that the petitioner was out of the country during the relevant point of time and this was informed to the respondent by the father of the petitioner. Therefore,



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according to the petitioner, he did not intentionally stay away from the proceedings.

8.The petition filed for return of vehicle was already dismissed by the learned Magistrate and it was subsequently confirmed by the Sessions Court in CrI.R.C(MD)No.718 of 2017. The petition challenging the same, was closed by this Court, since the very confiscation order has been put to challenge in this writ petition. In view of the same, original RC Book of the vehicle is available with the petitioner and the petitioner is willing to produce the same before the respondent. The learned Additional Public Prosecutor, on instructions, submitted that the vehicle is still lying in the police station.

9.The specific case that was put-forth by the petitioner is that he had given his car for running a taxi service and the same was misused and the petitioner has absolutely no knowledge about the liquor bottles being transported in the vehicle.

10.In view of the above, this Court is inclined to remand the matter back to the file of the respondent in order to afford the petitioner with one more opportunity to produce the original RC Book and to participate in the



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proceedings before the respondent. It will be left open to the respondent to consider the plea raised by the petitioner and the documents submitted by the petitioner and arrive at a conclusion strictly in accordance with law.

11.In the result, the confiscation order dated 01.05.2017 passed by the respondent is set aside and consequently, the order passed in the appeal by the First Additional District and Sessions Judge, Madurai in CrI.A.No.52 of 2017, dated 19.08.2017 is also set aside and the matter is remanded back to the file of the respondent. The respondent is directed to issue a fresh notice to the petitioner and the petitioner is directed to submit all the relevant documents and take his defence and the same will be considered by the respondent on its own merits and in accordance with law. The respondent shall pass final orders within a period of two months from the date of receipt of a copy of this order.

12.This Writ Petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

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Internet : Yes/No
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To

- 1.The first Additional District and Sessions Judge,
Madurai
- 2.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Madurai.



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N.ANAND VENKATESH, J.

Ns

Order made in
W.P.(MD).No.3069 of 2018
and
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Dated:

13.09.2022