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CrI.O.P.No.14270 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.14270 of 2024

S. Shamim

... Petitioner

/versus/

1. Additional Superintendent of Police,
Office of the Superintendent of Police,
District Police Office,
Thriuvallur.

2. State Rep. by its
The Inspector of Police,
PEW R.K.Pet Police Station,
Tiruttani, Thiruvallur District – 631 209.
(Crime No.203 of 2023)

... Respondents

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C.,
pleaded to set aside the order passed by the 1st respondent dated 27.02.2024 and
consequently order to release the petitioner's vehicle Registration No.TN-20-
DX-3532, Mahindra Bolero Neo N8, Registration date: 16/03/2023 which is
under the custody of the 2nd respondent.

For Petitioner : Mr.B.Tamilarasan

For Respondents : Mr.K.M.D.Muhilan
Government Advocate (CrI.Side)



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ORDER

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The petitioner herein is the owner of Mahindra Bolero Neo N8 bearing Reg.No.TN-20-DX-3532. On 01.08.2023, the respondent police during vehicular check intercepted the car and found IMFL 180 ml of Black pearl Brandy i.e., 384 bottles. The husband of the petitioner and his associate was arrested for possessing IMFL illegally and the Balero car which has been used for transporting liquor was seized. When the confiscation proceedings commenced by the respondent police, the petitioner herein filed CrI.O.P.No.4277 of 2024 seeking direction to release the vehicle.

2. This Court, earlier after considering the petition and the submissions made by the Additional Public Prosecutor recorded that the confiscation proceedings has already been initiated and notice issued to the petitioner to protest the confiscation proceedings. Therefore, direction was issued to the Additional Superintendent of Police, Tiruvallur, before whom the confiscation proceedings was pending to pass final orders, after affording an opportunity to the petitioner and such order shall be passed within 10 days. By that time, the petitioner who has received notice for confiscation, had participated in the proceedings and made her objection dated 04.02.2024. The Deputy Superintendent of Police, on considering the objections and other



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material facts has passed final order on 27.02.2024. Incidentally, this order was passed on the same day when the High Court disposed of the Criminal Original Petition filed by the petitioner herein.

3. In the confiscation order under Section 14(4) of Tamil Nadu Prohibition Act, the petitioner was informed about her right of appeal under Section 14(5) of Tamil Nadu Prohibition Act, within a period of one month. The final order of the confiscation though received by the petitioner on 27.02.2024, instead of availing the opportunity of statutory appeal under Section 14(5) of the Act, the petitioner has filed another Criminal Original Petition which is now pending consideration.

4. In the present petition, the petitioner challenges the final order on the ground that without affording opportunity, the order was passed and therefore, she must be given an opportunity.

5. When this Court pointed to the Learned Counsel for the petitioner that opportunity been already given to the petitioner and she has made a protest through her letter dated 04.02.2024 and only thereafter, final order has been passed.



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6. The Learned Counsel for the petitioner states that atleast another opportunity to prefer appeal under Section 14(5) of the Act should be given to the petitioner.

7. The prime contention of the Learned Counsel for the petitioner is that she is not an accused in the case for possession or transporting IMFL liquor illegally. She has purchased the vehicle through loan and bound to pay the instalments. The confiscation of the vehicle will create great hardship to her and therefore, the order of confiscation is illegal and bad in law.

8. The Learned Government Advocate (CrI.Side) appearing for the respondents would state that the vehicle was in possession of the petitioner's husband and it was carrying 384 bottles of 180 ml brandy. Therefore, the petitioner's husband and his associate by name, Deena been prosecuted for offence under Section 4 (1) (a) r/w 4 (1-A) (ii) of Tamil Nadu Prohibition Act.

9. Section 14(4) of Tamil Nadu Prohibition Act any conveyance used for transporting prohibited liquor is liable to the confiscated. Prosecution may instituted against the owner of the vehicle or not, but the vehicle is liable to confiscated. However, before passing order of confiscation, notice in writing



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has to be issued to the owner of the vehicle and after affording opportunity to make representation in writing, vehicle may be seized or in view of confiscation amount not exceeding the market price of the vehicle can be collected. There is an appellate remedy for persons aggrieved under Section 14(5) of the Act. Within one month from the date of receipt of the order, the party can approach the Court of Sessions having jurisdiction by way of appeal.

10. In this case, notice calling for explanation was issued to the petitioner on 23.01.2024. The petitioner gave his written response on 04.02.2024. The final order of confiscation was passed on 27.02.2024 and it was served on the petitioner on the same day. The petitioner instead of availing the Appellate remedy which is explicitly mentioned in the confiscation order, had preferred the present Criminal Original Petition on 05.06.2024 i.e., after expiry of 65 days to prefer appeal.

11. As pointed by the Learned Government Advocate (Crl.Side) for the respondent, Section 14(4) of the Act empowers the competent authority to initiate confiscation proceedings whether or not the owner of the vehicle is arrayed as an accused. The Law mandates prior notice and opportunity to the owner of the vehicle to show cause why vehicle should not be confiscated. This



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mandatory provision been fully complied by the respondent police and the petition has also availed that opportunity and given her representation. The said representation does not speak about her innocence in the crime or adequate reason why it should not be confiscated. Therefore, the competent authority being fully satisfied, has ordered confiscation and it has been now stated that auction of the vehicle been fixed on 09.07.2024. If at all the petitioner is interested, she can resort to the alternate remedy available to her, namely, pay the value of the vehicle in view of the confiscation and retrieve her vehicle.

12. This Court under Section 482 of Cr.P.C., cannot lend any assistance to the petitioner herein who has knowingly not availed the Appellate remedy and had not made out the case why her vehicle should not be confiscated.

13. Hence, this Criminal Original Petition is dismissed.

01.07.2024

Index : Yes/No.
Neutral Citation : Yes/No.
bsm

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2. The Inspector of Police,
PEW R.K.Pet Police Station,
Tiruttani, Thiruvallur District – 631 209.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.



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