



W.P.(MD)No.2664 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.2664 of 2024

and

W.M.P.(MD)Nos.2673 and 2674 of 2024

S.Baskaran

... Petitioner

versus

1. The Commissioner of Police,
Madurai City,
Madurai.
2. The Deputy Commissioner of Police,
Head Quarters,
Madurai City,
Madurai.
3. The Inspector of Police,
Prohibition Enforcement Wing,
TPK Road, Crime Branch Premises,
Madurai City.
4. The Inspector of Police,
B-5, South Gate Police Station,
Madurai City.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent vide Na.Ka.No.15/DC/HQ/MC/2023 dated 01.02.2024 and quash the same as illegal and consequently, direct the 3rd respondent to release the petitioner's vehicle bearing Reg.No.TN59 BV 3705.

For Petitioner : Mr.A.B.Jeeva

For Respondents : Mr.M.Vaikkam Karunanidhi,
Government Advocate (Crl. side)

ORDER

The petitioner has filed this writ petition challenging the order of confiscation issued by the second respondent dated 01.02.2024. By the impugned order, a vehicle-Auto bearing Reg.No.TN59 BV 3705 was confiscated by the second respondent for the involvement in a criminal case in Cr.No.447 of 2023.



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2. The learned counsel appearing for the petitioner submits that originally, the petitioner was the owner of the vehicle bearing Reg.No.TN59 BV 3705 and he has sold the vehicle to one Vijayakumar on 17.09.2023. The said Vijayakumar has leased out the vehicle to one Radha, who has transported 120 liquor bottles in the said vehicle, without the knowledge of the said Vijayakumar. The respondent Police has registered a criminal case in Cr.No.447 of 2023 and seized the vehicle, however, the said vehicle has not been produced before the concerned authority.

3. The learned counsel appearing for the petitioner further submits that after the seizure of the vehicle, the said Vijayakumar has approached the concerned authority and submitted a representation for return of vehicle. But, his representation was not considered as the RC book of the vehicle stands in the name of the petitioner. On the request made by the said Vijayakumar, the petitioner has moved an application before the learned Judicial Magistrate No.IV, Madurai, in Cr.M.P.No.



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5376 of 2023 under Sections 451 and 457 of Cr.P.C. for release of the vehicle bearing Reg.No.TN59 BV 3705 and the same was dismissed by order dated 10.11.2023 that he is not the owner of the vehicle. As against that order, the petitioner has filed a Criminal Revision Petition before this Court in CrI.R.C.(MD)No.1317 of 2023. Considering the facts and circumstances of the case, this Court, by order dated 21.12.2023, directed the Inspector of Police, B-5 South Gate Police Station, Madurai, to ascertain the ownership of the vehicle and file a report in this regard. Pursuant to the same, the Inspector of Police has filed a report before this Court that the said Vijayakumar is the owner of the vehicle, however, the RC book of the vehicle stands in the name of the petitioner and the same has not been transferred to the name of the said Vijayakumar. Considering the same, this Court, by order dated 01.02.2024, disposed of the Criminal Revision Petition with certain directions. The relevant portion of the order is extracted as under:

“8. Considering the facts and circumstances of the case and by following a decision of the Hon'ble Supreme Court of India in State of M.P v. Uday Singh (supra), this



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Court has inclined to dispose of this Criminal Revision on the following terms:-

(i) Since the confiscation proceedings are pending, neither the petitioner nor the owner of the said vehicle is not entitled for return of the vehicle;

(ii) The respondent is directed to complete the confiscation proceedings within a period of one month from the date of receipt of a copy of this order;

(iii) If the confiscation proceedings are not completed within the date stipulated above, then the owner of the vehicle will be entitled for return of the custody of the vehicle on the following conditions:-

(a) The order of the learned Judicial Magistrate No.IV, Madurai, in CrI.M.P.No.5376 of 2023, dated 10.11.2023, is set aside.

(b) The owner of the vehicle will be entitled for return of the Autorickshaw bearing registration No.TN 59 BV 3705;

(c) The owner of the vehicle shall produce the original RC Book of the vehicle and other relevant records to prove his ownership and the learned Judge, on perusal of the RC book and other records, retaining the photocopies of the same, shall return the original



documents to the owner of the vehicle with a view to use the vehicle;

(d) The vehicle owner shall not alter or alienate the vehicle in any manner till adjudication is over;

(e) The owner of the said vehicle shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the court below, as well as by the District Collector of the District or authorized officer on behalf of the Government;

(f) The petitioner/owner of the vehicle shall participate in the confiscation proceedings, if any, initiated and shall produce the vehicle before the confiscation authority. This order is subjected to the confiscation proceedings.

(g) The owner of the said vehicle shall not indulge in the similar offence either by using the present vehicle or any other vehicle. If he is found to be involved in any of similar offence in future either by way of using the present vehicle or through any other vehicle, this order of returning the present vehicle (Auto rickshaw bearing registration No.TN 59 BV 3705), shall stand automatically vacated.”



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WEB COPY 4. The learned counsel for the petitioner further submits that when the revision petition was pending before this Court, the second respondent, in a hurried manner, has passed the impugned order dated 01.02.2024 without providing an opportunity of hearing to the said Vijayakumar. Therefore, he requests this Court to interfere with the impugned order.

5. The learned counsel for the petitioner, by relying on the orders passed by this Court in W.P.(MD)No.3069 of 2018 dated 13.09.2022 and W.P.(MD)No.12239 of 2021 dated 20.07.2021 and also the order of the Hon'ble Supreme Court passed in W.P.(C)No.14 of 2008 dated 19.04.2010, submits that in the event, if a decision has been taken without giving an opportunity of hearing, the Court can interfere with the same and can pass an order for conducting a fresh enquiry.



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6. The learned Government Advocate (Crl. Side) appearing for the respondents submits that the vehicle bearing Reg.No.TN59 BV 3705 was involved in a prohibition offence and therefore, the respondent Police has initiated the proceedings under Section 14(4) of the Tamil Nadu Prohibition Act and also confiscated the vehicle. The learned Government Advocate further submits that as against the order of confiscation, the aggrieved party is also having an appeal remedy before the Sessions Court.

7. This Court considered the rival submissions and perused the materials placed on record.

8. In this case, the petitioner, who was the original owner of the vehicle, sold the vehicle to one Vijayakumar, ten days prior to the commission of offence. The said Vijayakumar has leased out the vehicle to one Radha, who has transported 120 liquor bottles in the said vehicle. Therefore, the respondent Police has registered a case in



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Cr.No.447 of 2023 and seized the vehicle. Though the said

Vijayakumar approached the concerned authority for return of vehicle, his request was not considered as the RC book of the vehicle stands in the name of the petitioner. The petitioner has also filed an application before the concerned Magistrate for return of vehicle and the same was dismissed by order dated 10.11.2023. Against that order, the petitioner has filed a Criminal Revision Petition before this Court in CrI.R.C.No. 1317 of 2023. This Court, by order dated 01.02.2024, disposed of the Criminal Revision Petition and directed the respondent Police to conduct an enquiry and conclude the confiscation proceedings by providing an opportunity to the owner of the vehicle. But, the respondent Police, in a hurried manner, passed the confiscation order dated 01.02.2024 without complying the directions of this Court passed in CrI.R.C.(MD)No.1317 of 2023 dated 01.02.2024 and that too on the very same day. On this ground, the impugned order dated 01.02.2024 passed by the second respondent is liable to be set aside.



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9. Accordingly, this writ petition is allowed. The impugned order dated 01.02.2024 passed by the second respondent is hereby set aside and the matter is remitted back to the second respondent for fresh consideration. No costs. Consequently, connected miscellaneous petitions are closed.

08.02.2024

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

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B.PUGALENDHI, J.

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