



W.P.(MD) No.8898 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8898 of 2024

M.Vijayakumar

... Petitioner

/vs./

1.The Deputy Commissioner of Police,
Headquarters,
Madurai City.

2.The Inspector of Police,
Prohibition Enforcement Wing,
TPK Road,
Crime Branch Premises,
Madurai City.

3.The Inspector of Police,
B-5, South Gate Police Station,
Madurai City.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to release the petitioner's vehicle forthwith bearing Registration No.TN 59 BV 3705 as per the order of this Court in CrI.R.C.(MD) No.1317 of 2023 dated 01.02.2024.



W.P.(MD) No.8898 of 2024

WEB COPY

For Petitioner : Mr.A.B.Jeeva

For Respondents : Mr.S.Manikandan
Government Advocate (Crl.side)

ORDER

The petitioner has filed this Writ Petition for a Mandamus to direct the first respondent to release the petitioner's vehicle bearing Registration No.TN 59 BV 3705 as per the order of this Court in Crl.R.C.(MD) No.1317 of 2023 dated 01.02.2024.

2.The petitioner has purchased an auto bearing Reg.No.TN 59 BV 3705 from one Baskaran, the petitioner in Crl.R.C.(MD) No.1317 of 2023 and W.P.(MD) No.2664 of 2024. According to the petitioner, the petitioner has purchased the aforesaid vehicle on 17.09.2023 and had leased the same to one Radha before effecting the name transfer. According to the petitioner, the said Radha had carried illicit stock of Alcohol contrary to the provisions of the Tamil Nadu Prohibition Act, 1937 and thus, the auto was seized from her custody on 27.09.2023. It is further submitted that earlier, the said Baskaran had filed Crl.R.C.(MD) No.1317 of 2023 against the order passed by the learned Judicial Magistrate No.IV, Madurai in Cr.M.P.No.5376 of 2023 in Crime No.447 of 2023

2/11



W.P.(MD) No.8898 of 2024

on the file of the Inspector of Police, B-5, South Gate Police Station, Madurai City.

3.It is the case of the petitioner that the Court interfered with the order passed by the learned Magistrate on 10.11.2023 in Cr.M.P.No.5376 of 2023, in the light of the law laid down by the Hon'ble Supreme Court in ***State of M.P. Vs.***

Uday Singh reported in ***(2020) 12 SCC 733*** with the following directions:

“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 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.



W.P.(MD) No.8898 of 2024

WEB COPY

(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.”



W.P.(MD) No.8898 of 2024

WEB COPY

4.It is further submitted that the said de jure owner, Baskaran again filed W.P.(MD) No.2664 of 2024, which came to be disposed of on 08.02.2024, which was filed challenging the order of confiscation by the Deputy Commissioner of Police, the first respondent herein. This Court by its order dated 08.02.2024 ordered as follows:-

*“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 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.**”*



W.P.(MD) No.8898 of 2024

WEB COPY

5.The learned counsel for the petitioner submits that the petitioner is a semiliterate person and a dependant on the income from the vehicle, which he had purchased from the de jure owner, whose name continues to remain in the RC Book. It is further submitted that the proceeding has been conducted by the first respondent contrary to the order passed by this Court on 08.02.2024 in W.P.(MD) No.2664 of 2024.

6.The writ petition is opposed by the learned Government Advocate for the respondent on the ground that the confiscation proceedings have been completed pursuant to the order passed by this Court in W.P.(MD) No.2664 of 2024 dated 08.02.2024. It is submitted that only the owner of the vehicle is to be heard and as the petitioner is not the owner, the petitioner cannot be heard and therefore, this Writ Petition is liable to be dismissed. That apart, the learned Government Advocate for the respondent has produced a copy of the confiscation proceeding initiated against the said Baskaran, wherein the show cause notice was issued not only to the petitioner but also to Baskaran. He submits that the petitioner has no right to claim for release of the vehicle as prayed.



W.P.(MD) No.8898 of 2024

WEB COPY

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

8.The order that was passed in the writ petition that was filed by Baskaran in W.P.(MD) No.2664 of 2024 is categorical. It is made clear that the petitioner shall also be heard before fresh orders are passed. Under these circumstances, the earlier confiscation order dated 01.02.2024 was set aside.

9.Under these circumstances, I am of the view that not only the petitioner but also the said Baskaran had to be heard by the first respondent in the proposed confiscation proceedings pursuant to the directions of this Court dated 08.02.2024 in W.P.(MD) No.2664 of 2024. Considering the fact that the vehicle has been under seizure and is now pending confiscation proceedings depriving the petitioner and the right to livelihood to the petitioner, I direct the first respondent to pass fresh orders keeping in line with the observations of this Court dated 08.02.2024 in W.P.(MD) No.2664 of 2024 within a period of 45 days from the date of receipt of a copy of this order. Since the petitioner claims to be the owner of the vehicle, the respondents may obtain necessary security both from the



W.P.(MD) No.8898 of 2024

petitioner and the said Baskaran for releasing of the vehicle, in the light of the dictum of the Hon'ble Supreme Court in General Insurance Council and others Vs. State of Andhra Pradesh and others reported in 2010 AIR SCW 2967, wherein the Hon'ble Supreme Court has held as under:-

"7. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts, the court observed as under:-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

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W.P.(MD) No.8898 of 2024

WEB COPY

15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.”

10. With the above directions, the Writ Petition stands disposed of. No costs.

Index : Yes / No
Internet : Yes / No
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10.04.2024



W.P.(MD) No.8898 of 2024

WEB COPY

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W.P.(MD) No.8898 of 2024

C.SARAVANAN, J.

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W.P.(MD) No.8898 of 2024

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