



W.P.(MD) No.14785 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.14785 of 2024
and
W.M.P.(MD)No.12969 of 2024**

Janakiraman

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Commissioner & Secretary,
Prohibition & Excise Department,
Fort St. George, Chennai – 600 009.

2.The Deputy Superintendent of Police,
O/o. the Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Virudhunagar.

3.The Inspector of Police,
Vachakarapatti Police Station,
Virudhunagar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notice dated 30.05.2024 issued by the 2nd respondent and quash the same and consequently, direct the respondents to release the vehicle bearing



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Registration No.TN-29-CV-3394 (Model Name-Eicher Pro 2110 H HST-Goods Carrier) belongs to the petitioner.

For petitioner : Mr.D.Shanmugaraja Sethupathi

For respondents : Mr.G.Suriyananth

Senior Standing Counsel for R1

Mr.A.Albert James

Government Advocates (Crl.Side) for R2 & R3

ORDER

Heard learned counsel for the petitioner, learned Special Government Pleader for the first respondent and learned Government Advocate (Crl.Side) for the respondents 2 and 3.

2. This Writ Petition has been filed to call for the records pertaining to the impugned notice dated 30.05.2024 issued by the second respondent and quash the same and consequently, direct the respondents to release the vehicle bearing Registration No.TN-29-CV-3394 (Model Name-Eicher Pro 2110 H HST- Goods Carrier) belongs to the petitioner.

3. The petitioner claims to be the owner of the subject vehicle, which was involved in alleged offences in FIR in Crime No.110 of 2024, dated 08.05.2024 before the third respondent for alleged violation of the provisions of Cigarettes



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and Other Tobacco Products Act (COTPA), 2003, IPC and Tamil Nadu Prohibition Act, 1937.

4. The case of the petitioner is that the petitioner had engaged a Driver namely, one Sekar to collect the consignments from Bangalore to Virudhunagar. However, without any authorisation and knowledge of the petitioner, the said Sekar along with two others namely, Prabhakaran and Jagadeesh had allegedly carried on the tobacco products, contrary to the provisions of the COTPA Act, 2003, warranting punishment under Section 24(1) of the COTPA Act, 2003, Section 328 of IPC and Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937.

5. It is submitted that the second respondent has now issued a notice to confiscate the subject lorry under Section 14(4)(i) of the Tamil Nadu Prohibition Act, 1937.

6. It is submitted that the petitioner is being unnecessarily harassed for the alleged offences committed by the Driver. It is submitted that the confiscation can be made, only after the offence is made out by the petitioner and the petitioner is



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convicted on the offences.

7. The learned counsel for the petitioner would further submit that the subject vehicle is required as the petitioner is dependant on the income from the lorry service.

8. It is submitted that the petitioner had also filed an application under Sections 451 & 457 of Cr.P.C (since repealed) on 21.06.2024, which has been returned on the ground that the petitioner's vehicle is involved in offences under the provisions of the Tamil Nadu Prohibition Act, 1937. Hence, prays to allow this Writ Petition.

9. The learned Special Government Pleader for the first respondent would submit that there is no merits in the present Writ Petition and therefore, this Writ Petition is liable to be dismissed by directing the petitioner to participate in the Criminal proceedings initiated pursuant to the impugned notice dated 30.05.2024.

10. Having considered the submissions made by the learned counsel for the



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petitioner, learned Special Government Pleader for the first respondent and learned Government Advocate (Crl.Side) for the respondents 2 and 3, the Court is of the view that the impugned Show Cause Notice cannot be quashed. At the same time, I also see no reason why the vehicle should not be provisionally released. Merely because of the vehicle was involved in the alleged offences under Section 24(1) of COTPA Act, 2003, Section 328 of IPC and 4(1)(a) of the Tamil Nadu Prohibition Act, 1937, would not justify its non use under the custody of third respondent.

11. By retaining the vehicle under the custody of the third respondent, the vehicle is prone to deterioration and its value will depreciate quickly serving neither cause for the respondents nor the petitioner.

12. Therefore, to balance interest of the parties, the Court is inclined to order provisionally release the subject vehicle, subject to the petitioner depositing Rs.75,000/- to the credit of the Crime No.110 of 2024, before the Judicial Magistrate No.1, Virudhunagar. Subject to deposit of the above amount and furnishing such other security as may be required in the form of bond or Letter of



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Guarantee, subject vehicle shall be released forthwith to the petitioner.

13. Needless to state, the amount, which is to be deposited by the petitioner is without prejudice the rights of the petitioner in the proposed proceedings.

14. The first respondent is directed to comply with the show cause proceedings preferably within a period of eight weeks from the date of receipt of a copy of this order.

This Writ Petition is disposed of, with above directions. No costs
Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
apd

04.07.2024

To

1.The State of Tamil Nadu,
Represented by the Commissioner & Secretary,
Prohibition & Excise Department,
Fort St. George, Chennai – 600 009.

2.The Deputy Superintendent of Police,
O/o. the Deputy Superintendent of Police,

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Prohibition Enforcement Wing,
Virudhunagar.

3.The Inspector of Police,
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C.SARAVANAN, J.

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