

W.P.(MD)No.27084 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
15.11.2024

PRONOUNCED ON
06.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.27084 of 2024
and W.M.P.(MD).No.22995 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 state,
Virudhunagar, Virudhunagar District.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned show cause notice vide C.No. 36-3/CONF/DSP/PEW/VNR/2024 dated 25.09.2024 issued by the 2nd respondent and quash the same and consequently forbearing the respondents



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from continuing the confiscation proceedings in respect of the vehicle bearing Registration N.TN-29-CV-3394 (Model Name – EICHER PRO 2110 H HST – Goods carrier) belongs to the petitioner till the disposal of the case in Crime No.110/ 2024 on the file of the 3rd respondent.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.R.Suresh Kumar for R1
Additional Government Pleader

: Ms.M.Aasha for RR2 & 3
Government Advocate (Crl.Side)

ORDER

The challenge in the Writ Petition is a show cause notice issued by the second respondent and for a consequential direction to forebear the respondents from continuing the confiscation proceedings of the vehicle belonging to the petitioner.

2. Heard Mr.D.Shanmugaraja Sethupathi, learned counsel for the petitioner, Mr.R.Suresh Kumar, learned Additional Government Pleader appearing on behalf of the first respondent and Ms.M.Aasha, learned Government Advocate (Crl.Side) appearing on behalf of the respondents 2 & 3.



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3. The case of the petitioner is that the petitioner is the owner of the goods carrier vehicle bearing Registration No.TN-29-CV 3394 and he also holds a national permit authorisation. It had come to the knowledge of the petitioner that the third respondent herein had registered a case in Crime No.110 of 2024 under the Provisions of Cigarette and Other Tobacco Products Act 2003, Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937 and Section 328 of IPC against three individuals.

4. A reading of the FIR would indicate that when vehicle belonging to the petitioner was intercepted and inspection conducted, the third respondent had found contraband such as banned Tobacco Products including alcohol and that based on the confession given by the accused confiscation proceedings have been initiated to confiscate the vehicle belonging to the petitioner. During the investigation, a show cause notice had been issued. He would further submit that the petitioner had earlier approached this Court in ***W.P.(MD)No.14785 of 2024***, wherein this Court was inclined to provisionally release the vehicle subject to the petitioner depositing a sum of Rs.75,000/- to the credit of the Crime No.110 of 2024. The petitioner had also deposited the said amount and the vehicle was



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released. But, however, under the impugned proceedings, the second respondent had confiscated the vehicle without any authority.

5. He would further submit that the second respondent cannot be deemed to be a Prohibition Officer under the Act for initiation of confiscation proceedings against the petitioner's vehicle. He had also relied upon a judgment of the Hon'ble Apex Court to contend that only after the accusations is found to be proved by a Competent Court, the confiscation could be enforced. Therefore, he would seek interference with the orders passed by the respondent and set aside the order of confiscation.

6. Countering his arguments, Mr.R.Suresh Kumar, learned Additional Government Pleader appearing on behalf of the first respondent on instructions would submit that the second respondent had been conferred with the power of Prohibition Officer. He would further submit that the judgment relied upon by the petitioner relates to Wildlife Protection Act, wherein Section 39 envisages what would be the Government property which would include the vehicle that was involved in committing of offence.



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WEB COPY 7. Ms.M.Aasha, learned Government Advocate (Crl.Side) appearing for the second and third respondents would reiterate the submissions made by the learned Additional Government Pleader and would submit that the second respondent had been vested with the powers of Prohibition Officer for initiating the confiscation proceedings. She would further submit that a show cause notice issued to the petitioner was subject matter of challenge in the Writ Petition filed by the petitioner before this Court on the very same grounds and the learned Single Judge had rejected the contention and had provisionally released the vehicle subject to the confiscation proceedings.

8. She would further submit that it is not the case of the petitioner that no opportunity of hearing was given to the petitioner. A show cause notice was issued by the second respondent on 30.05.2024, which was the subject matter of the challenge before this Court and only after the disposal of the Writ Petition, the present notice had been issued calling upon the petitioner to submit his explanation, failing which order of confiscation will be passed. The present order impugned is only a show cause notice in continuation of the earlier show cause notice dated 30.05.2024, which had



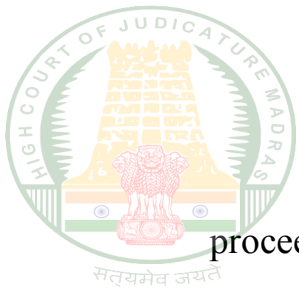
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been unsuccessfully challenged by the petitioner. The petitioner therefore, cannot be heard to say that the second respondent do not have jurisdiction to decide the issue.

9. I have considered the rival submissions made by the learned counsels appearing for their respective parties and had perused the materials available on record.

10. The present order impugned is a notice calling upon the petitioner to submit his objections, if any to proceed with the confiscation proceedings. It is to be noted that under the reference third cited, an earlier show cause notice dated 30.05.2024 had been referred to.

11. As rightly pointed out by the learned Government Advocate (Crl) appearing on behalf of the second and third respondent, the said notice had been challenged by the petitioner before this Court and this Court had held that the same was within the jurisdiction of the second respondent to issue the said show cause notice. Without disturbing the same, the learned Single Judge had directed to release of vehicle subject to the outcome of the



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proceedings. Thereafter, the second respondent had issued the present notice impugned herein which is only a continuation of the earlier show cause notice dated 30.05.2024. Without submitting his explanation, the petitioner had again approached this Court raising the very same ground of jurisdiction which was raised by him in the earlier round of litigation.

12. The grounds that had been raised is that the second respondent is not an authorised Prohibition Officer for invocation of the proceedings. The Government order in this regard clearly indicates that the second respondent is the Prohibition Officer of the said District concerned and therefore, he is authorised to initiate the confiscation proceedings.

13. The judgment relied upon by the learned Counsel for the petitioner could not be applicable to the facts of the present case, as the Prohibition Rules does not prohibit the confiscation proceedings till the completion of the proceedings initiated before the Criminal Court. The confiscation proceedings is a parallel proceedings to the criminal case that had been registered. Therefore, I do not find any infirmity in the show cause notice issued to the petitioner.



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WEB COPY 14. Accordingly, this Writ Petition is dismissed. The petitioner is directed to submit his explanation on or before 30.01.2025 to the show cause notice impugned in this Writ Petition and thereafter, the second respondent after affording an opportunity of hearing shall pass appropriate orders on merits and in accordance with the law. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

06.01.2025

Gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

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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3.The Inspector of Police,
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K. KUMARESH BABU, J.

Gba

*A Pre-Delivery Order in
W.P.(MD)No.27084 of 2024
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06.01.2025