

(2011) 04 MAD CK 0233

In the Madras High Court

Case No : Writ Petition No. 7191 of 2011

E. Nirmala

APPELLANT

Vs

The Additional Superintendent of Police, Prohibition and
Excise Wing Department and The Inspector of Police

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Prohibition Act, 1937 — Section 14(4), 14(5)

Citation : (2011) 04 MAD CK 0233

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

**Advocate : C. Prakasam, for the Appellant; R. Thirugnanam, Special
Government Pleader, for the Respondent**

Judgement

M. Jaichandren, J.—This Writ Petition has been filed praying that this Court may be pleased to issue a Writ of Mandamus to direct the first

Respondent, to release the Maruthi Swift car, bearing Registration No. TN-48-Q-8670, seized by the second Respondent, on 30.01.2011, to the

Petitioner.

2. The learned Counsel appearing on behalf of the Petitioner had submitted that the Maruthi Swift car belonging to the Petitioner had been seized

by the second Respondent on the allegation that the said vehicle was transporting seven plastic cans of rectified spirit. In fact, the second

Respondent had seized the lorry, bearing Registration No. R.J.05-G-4513, for the alleged offence of transporting 353 plastic cans containing

rectified spirit. It had also been stated that the second Respondent had not seized any plastic cans containing rectified spirit from the Maruthi Swift

Car belonging to the Petitioner.

3. The main contention of the learned Counsel appearing on behalf of the Petitioner is that the first Respondent would be entitled to confiscate the vehicle, which is said to have committed the offence, as alleged by the Respondents, u/s 14(4) of the Tamil Nadu Prohibition Act, 1937. He had also submitted that the Judicial Magistrate's Court has no power to release the vehicle, during the pendency of the confiscation proceedings and therefore, the Petitioner had made a written representation to the first Respondent for the interim release of the said vehicle. He had submitted that no orders have been passed, pursuant to the representation made by the Petitioner. Hence, the Petitioner had preferred the present Writ Petition before this Court, under Article 226 of the Constitution of India.

4. The learned Counsel appearing on behalf of the Petitioner had relied on the decision of the Supreme Court, in *Sunderbhai Ambalal Desai v. State of Gujarat* 2003 (1) CTC 175 to state that the vehicles seized by the police should not be kept at the police station for a long period. The Magistrate concerned should pass appropriate orders, immediately, by taking an appropriate bond and a guarantee, as well as the necessary security for the return of such vehicles.

5. A counter affidavit has been filed on behalf of the first Respondent, denying the claims made by the Petitioner. It had been stated that the show cause notice, dated 21.03.2011, had been issued to the Petitioner, by the first Respondent, asking the Petitioner to show cause as to why the said car should not be confiscated, u/s 14(4) of the Tamilnadu Prohibition Act, 1937, and as to why criminal proceedings should not be initiated against the Petitioner. Hence, it is for the Petitioner to show cause and to convince the first Respondent regarding the claims made by the Petitioner.

Therefore, the present Writ Petition filed by the Petitioner is premature in nature.

6. The learned Counsel for the Respondents had relied on the decision of the Division Bench of this Court, reported in *David v. Shakthivel, Inspector of Police-cum-Station House Office* 2010 (1) LW 129 (crl) in support of his contention. It is for the Petitioner to show cause against the notice, dated 21.03.2011, issued by the first Respondent and if an order of confiscation is passed by the authority concerned, u/s 14(4) of the Tamil Nadu Prohibition Act, 1937, it would be open to the Petitioner to challenge

the same before the appropriate forum, as per Section 14(5) of

the said Act. In such circumstances, the Writ petition is liable to be dismissed.

7. In view of the averments made in the affidavit filed in support of the writ petition and in view of the submissions made by the learned Counsels

appearing on behalf of the Petitioner, as well as the Respondents, this Court finds that the Petitioner has challenged the show cause notice, dated

21.03.2011, issued by the first Respondent. Therefore, it is not open to the Petitioner to challenge the said show cause notice, at this stage, before

this Court, by filing the present Writ Petition, under Article 226 of the Constitution of India. Instead, the Petitioner ought to have gone before the

first Respondent to submit her explanation to the said show cause notice. If an order is passed u/s 14(4) of the Tamil Nadu Prohibition Act, 1937,

confiscating the vehicle in question, it would be open to the Petitioner to challenge the said order by filing an appeal before the appropriate forum,

u/s 14(5) of the said Act. Therefore, this Court is of the considered view that the present Writ Petition filed by the Petitioner is premature in nature.

Hence, it is dismissed. No costs. However, it is made clear that it would be open to the Petitioner to submit her explanation, within 15 days from

today, since, a copy of the show cause notice, dated 21.03.2011, had been handed over to the learned Counsel for the Petitioner, by the learned

Counsel appearing on behalf of the Respondents. On receipt of the explanation to be submitted by the Petitioner, the first Respondent shall

consider the same and pass appropriate orders thereon, on merits and in accordance with law, within fifteen days thereafter. The Petitioner shall

co-operate, fully, in the enquiry proceedings to be conducted by the first Respondent.