

(2006) 10 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 22011 of 2002 and WPMP No. 17535 of 2006

M. Saravanan

APPELLANT

Vs

The District Prohibition Officer cum Additional Superintendent
of Police, Prohibition and The Inspector of Police, Prohibition
Enforcement Wing

RESPONDENT

Date of Decision : 27-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 451
Madras Prohibition Act, 1937 — Section 14(1), 14(3), 14(4), 14(5), 4(1)

Citation : (2007) WritLR 490

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : AR.L. Sundaresan, for the Appellant; V. Arun, Government Advocate,
for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The petitioner is the owner of a TATA 407 Tempo bearing Registration No. PY-01-H-7059. On 25.12.2001,

the said vehicle was intercepted by the Inspector of Police, Prohibition Enforcement Wing of Hosur and 10,000 Arrack Sachets were recovered

from the vehicle. A case, in Crime No. 3246 of 2001 for offences under Sections 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, was

registered.

2. On 26.12.2001, a show cause notice was issued to the petitioner by the first respondent, u/s 14(4) of the Tamil Nadu Prohibition Act, calling

upon the petitioner to show cause as to why the vehicle should not be confiscated to the Government. The petitioner submitted his explanation to

the show cause notice.

3. Since no orders were passed, in pursuance of the said show cause notice, the petitioner filed a Criminal M.P. No. 1175 of 2002 on the file of

the Judicial Magistrate No. 2, Hosur for return of the vehicle. By an order dated 22.4.2002, the said petition was allowed and the vehicle was

directed to be returned to the petitioner on condition that the petitioner executed an Indemnity Bond for a value of Rs. 3 lakhs. Though the

petitioner executed the Bond, the vehicle was not released to him.

4. Therefore, the petitioner filed a writ petition in W.P. No. 15695 of 2002. When the said writ petition came up for hearing, it was represented on

behalf of the respondents that they had already filed a petition for review before the Judicial Magistrate, seeking reconsideration of the order

directing return of the vehicle. On the basis of the said statement, this Court disposed of the writ petition by an order dated 15.5.2002, directing

the Judicial Magistrate No. 2, Hosur to dispose of the review petition. Unfortunately, both the petitioner as well as the respondents failed to bring

to the notice of this Court, at the time of hearing of the previous writ petition, that there was no scope for filing a review under the Code of Criminal

Procedure. But both the parties allowed the writ petition to be disposed of, on the basis of a wrong representation made by the respondents.

5. Thereafter, the first respondent passed an order dated 8.6.2002, directing confiscation of the said vehicle u/s 14(4) of the Tamil Nadu

Prohibition Act and also giving an option to the petitioner to pay the estimated market value of the vehicle of Rs. 94,800/-, in lieu of confiscation.

Challenging the said order, the petitioner has filed the above writ petition. The writ petition was admitted on 21.6.2002 and the respondents have

filed a common counter-affidavit.

6. In view of the fact that the vehicle was seized about five years ago, the petitioner has come up with a petition to fix an early date for the disposal

of the writ petition. However, since the scope of the dispute involved in the writ petition lies in a narrow campus, I have taken up the writ petition

itself for final disposal, with the consent of both the parties.

7. I have heard Mr. A.R.L. Sundaresan, learned senior counsel appearing for the petitioner and Mr. V. Arun, learned Government Advocate

appearing for the respondents.

8. Admittedly, the first respondent, who is the competent authority, issued a show cause notice dated 26.12.2001 u/s 14(4) of the Tamil Nadu

Prohibition Act. After the petitioner submitted his reply to the show cause notice, the first respondent has passed the impugned order confiscating

the vehicle involved in the commission of the offence and giving an option to the petitioner to pay the market value of Rs. 94,800/- in lieu of

confiscation. Thus, the first respondent has exercised quasi judicial functions under the Statute. The exercise of such quasi judicial functions is

subject to judicial review to a limited extent, within the parameters laid down by the Apex Court. Therefore, the impugned order is to be tested on

the touchstone of the procedure contemplated u/s 14(4) of the said Act.

9. Section 14(4) of the Tamil Nadu Prohibition Act, 1937 reads as follows:

14. Confiscation how ordered.--(4)Notwithstanding anything contained in Sub-sections (1) to (3), if the Collector or other Prohibition Officer-in-

charge of the district or any other officer authorized by the State Government in that behalf is satisfied that an offence has been committed against

this Act and whether or not a prosecution is instituted for such offence, he may without prejudice to any other punishment to which the offender is

liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel cart or other vehicle is seized, shall

be given --

(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle;

(ii) an opportunity at making a representation in writing within a reasonable time, not exceeding fourteen days as may be specified in the notice

against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter:

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu

of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.

10. As seen from the provisions of Section 14(4), the authority empowered to exercise the power of confiscation is liable to -

- a) issue a notice in writing specifying the grounds of confiscation.
- b) give an opportunity of making a representation against the proposed confiscation and
- c) afford a reasonable opportunity of being heard in the matter.

11. But it is seen from the impugned order that though the first respondent followed the procedure detailed above partly, the first respondent did not hold any enquiry. In other words, the first respondent issued a show cause notice as required under Clause (i) of the First Proviso u/s 14(4) of the Act and also gave an opportunity of making a representation to the petitioner as required under Clause (ii) of the said Proviso. However, the first respondent did not provide a reasonable opportunity of being heard to the petitioner, as seen from the impugned order itself. It is seen from paragraph-5 of the impugned order that after issuing a notice and receiving a representation from the petitioner, the first respondent proceeded to pass the impugned order without giving an opportunity of being heard to the petitioner. Thus, the procedure contemplated under the aforesaid Section 14(4) of the Act, has been violated by the first respondent, rendering the impugned order liable to be set aside.

12. Under normal circumstances, if an order is set aside on the ground that a reasonable opportunity was not provided, the matter will have to be remanded back to the same authority for fresh disposal in accordance with law. But such a remand would actually be a futile exercise, on account of the averments contained in the counter-affidavit filed by the respondents.

13. It is seen from paragraph-3 of the impugned order that the first respondent attributed knowledge as well as connivance of transportation of the contraband to the petitioner, on the basis of the confession of the driver of the vehicle. After taking such a positive stand in the impugned order, the first respondent has made a nose dive in the counter-affidavit filed in the writ petition. In paragraph-9 of the counter-affidavit, the respondents have stated that no confession statement was recorded by them. Again in paragraph-11 of the counter-affidavit, the respondents have stated that the confession of the driver was not at all recorded. In paragraph-15 of the counter-affidavit also, the respondents have confirmed that no confession statement was obtained from the driver and that the confiscation proceedings were not based on any confession statement of the accused in the

criminal case.

14. Thus, the averments made in the counter-affidavit runs contrary to the statement made in the impugned order. Moreover, the impugned order

does not even state any other evidence, on the basis of which it was passed, apart from the confession statement of the driver. To put in other

words, if the impugned order was not based on the confession statement, the impugned order does not indicate on what other material it was

passed. Thus, there has been a total non-application of mind on the part of the first respondent and the contradictory stand taken by the first

respondent makes the impugned order liable to be set aside.

15. u/s 14(5) of the Tamil Nadu Prohibition Act, 1937, a person aggrieved by an order of confiscation is entitled to file an appeal to the Court of

Sessions. But the petitioner has approached this Court under Article 226 of the Constitution, without exhausting the alternative remedy. However,

the writ petition was admitted as early as on 21.6.2002 and the Motor Vehicle in question is in police custody from 25.12.2001, for the past five

years. Therefore, I do not think it proper to drive the petitioner to avail of the alternative remedy of appeal to the Sessions Court. It is well settled

that after admitting a writ petition, it is not fair to send a person to seek the alternative remedy, at the time of final hearing of the writ petition. In any

case, the petitioner had already obtained an order from the Judicial Magistrate No. 2, Hosur u/s 451 Cr.P.C., though not by way of an appeal u/s

14(5) of the Tamil Nadu Prohibition Act. Therefore, the question of directing the petitioner to avail of the alternative remedy of appeal also does

not arise.

16. Consequently, the writ petition is allowed. The impugned order is set aside and the respondents are directed to return the vehicle in question,

within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WPMP is closed.