
(2005) 04 MAD CK 0056
In the Madras High Court
Case No : Writ Petition No. 8739 of 2005

S. Suresh

APPELLANT

Vs

Station House Officer

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 457
Madras Prohibition Act, 1937 — Section 14(4), 4(1)A

Citation : (2005) 04 MAD CK 0056

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : R. Karthikeyan, for the Appellant; E. Sampath Kumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for a Mandamus to direct the Station House Officer, Kottakuppam, Villupuram District, to

release the vehicle bearing Registration No. PY 01 AA 3030 Bolero car, to the petitioner.

2. The following facts are sufficient for the disposal of the writ petition.

3. According to the petitioner, he is the owner of the vehicle in question, purchased in the year 2001. The vehicle was left for some minor repairs

with the petitioner's mechanic on 25.2.2005 and the same was to be delivered back to him after two days. The petitioner was shocked to learn

that the petitioner's vehicle was detained by the respondent on 26.2.2005 on the ground that the same was involved in a prohibition offence and a

case was registered in Crime No. 151 of 2005. On enquiry, the petitioner came to know that the sole accused in the criminal case, namely, one

Sadiq Basha, was carrying 78 quarter bottles of brandy in two cardboard boxes on 26.2.2005. The vehicle was inspected by the respondent who

had detected the same and detained the vehicle after registering a case in Crime No. 151 of 2005. The accused had confessed that he had

purchased the liquor bottles and was transporting the same to Chennai to give a party to his friends.

4. The petitioner further states that on enquiry, after ascertaining the facts, he requested the respondent to release the same as he was the original

owner and the accused had used the same without the knowledge of the petitioner. Thereafter, the respondent directed the petitioner to approach

the competent Court. The petitioner approached the District Munsif-cum-Judicial Magistrate, Vanur, for the release of the vehicle. After coming to

know that the vehicle was not produced before the Court, he filed a petition on 1.3.2005 u/s 451 of Cr.P.C. seeking for custody of the vehicle

before the Court. The said petition was returned on 3.3.2005 on the ground that the case property was not received by the Court and the case

was also disposed of on 1.3.2005. It is only thereafter, the petitioner came to know that the criminal case was converted into S.T.C. and the said

Sadiq Basha had pleaded guilty and was sentenced to undergo two weeks simple imprisonment and a fine of Rs.600/- was imposed as against the

said accused.

5. Thereafter, the petitioner filed another petition u/s 457, Cr.P.C. on 1.3.2005 seeking to release the property in Crl. M.P. No. 467 of 2005,

whereby, the same was also closed on the ground that the case has been disposed of and hence, having no other alternative, the petitioner has

approached this Court.

6. In the counter affidavit filed by the respondent, it is stated that at about 7.30 hours on 26.2.2005, the Sub Inspector of Police, Kottakuppam

Police Station, along with his team, conducted checking of vehicles in Keezhpathupattu Check Post. At that time, the petitioner's vehicle was

stopped and checked by the police authorities and it was found that the driver was carrying 78 Nos. of 180 ml brandy bottles below the seats of

the vehicle. The driver of the vehicle was enquired and he informed that the vehicle belongs to one Suresh, son of Sampath residing at Pondicherry

and that he was proceeding to Chennai with the said brandy bottles for a party

with his friends and also informed that there were no proper bill or voucher or permit for the same.

7. The vehicle was seized along with the brandy bottles and was taken to the Kottakuppam Police Station and a case was registered u/s 4(1)(A)

of the Tamil Nadu Prohibition Act and the driver was remanded to judicial custody. He was later produced before the Judicial Magistrate, Vanur.

As the said vehicle was used for illegal purpose, it was decided to confiscate the vehicle and accordingly, a report was called for from the

Automobile Engineer, Government Automobile Workshop, Villupuram. But he inspected the said vehicle only on 17.3.2005, ascertained the value

of the vehicle and had submitted a detailed report on 17.3.2005 itself. The respondent has addressed a letter to the Additional Superintendent of

Police, Prohibition and Excise Wing, Villupuram, recommending confiscation of the vehicle and to take further action on 20.3.2005. A notice has

been sent to the petitioner on 21.3.2005. The owner of the vehicle was not traceable and the police officers are not able to serve the notice. It is

further stated that as the vehicle was used for illegal purpose, it was proposed to confiscate the vehicle u/s 14(4)(i) of the Tamil Nadu Prohibition

Act, 1937 and actions are being taken for confiscating the vehicle.

8. I have heard both sides and the facts pertaining to this case bring to light an unusual conduct on the part of the police officials in the background

of the above facts. Admittedly, even in terms of the statement given by the driver as well as the very report sent by the police officers after

investigation, the petitioner is not implicated as an accused. A perusal of the First Information Report also discloses that the driver had only stated

that the car belongs to the petitioner and that he was transporting liquor bottles and proceeding to Chennai only for the sake of his friends. He has

not implicated the petitioner in any manner and rightly, the petitioner is not shown as an accused in the complaint nor was he arrayed as an

accused. In fact, a perusal of the report of the Inspector to the Additional Superintendent of Police also shows that the petitioner/owner of the

vehicle was not implicated in any manner. In the said background, the decision taken by the respondent to confiscate the vehicle is very unusual.

The reason is obviously due to the fact that the petitioner had dared to approach this Court by filing the above writ petition. The writ petition was

filed on 14.3.2005 and notice was ordered on 16.3.2005 and according to the Government Advocate, message was sent immediately. The

present proceeding to confiscate the vehicle is taken admittedly only on 21.3.2005. Therefore, the action of the police is positively vindictive in

nature. The only other possible alternative is that the respondent was inclined to misuse the vehicle for himself in a high-handed manner.

9. The past events also do not reflect a proper conduct or attitude on the part of the investigating officer. The order of the learned District Munsif in

Crl.M.P. No. 467 of 2005 discloses that the case property was not produced before the Court which itself is improper. Instead of ordering the

petition, the petition is dismissed. However, strangely, the learned District Munsif-cum-Judicial Magistrate writes an official memorandum to the

Inspector, directing the Inspector to produce the case property before the Court on or before 3.3.2005 without fail. Such a letter has been written

after the disposal of the petition filed by the petitioner. It is rather unfortunate that a Judicial Officer should adopt such an attitude and also should

ignore the improper conduct on the part of the police officials and try to protect him. There was no justification for dismissing the petition for return

of the vehicle, if the Magistrate had felt that it was necessary to write a letter to the Inspector asking him to produce the case property.

10. In this context, in fact, I had directed the learned Government Advocate to file a statement as to how many cases of confiscation have been

sought for in the District. I did so because it was generally not done though the power was available, except probably in cases where the offence is

not restricted to Prohibition Act alone but involving more serious crimes in addition, or when the vehicle is abandoned or unclaimed. A perusal of

the statement filed by the learned Government Advocate shows that though few vehicles have been seized, all of those vehicles are as admitted by

the Government Advocate are unclaimed vehicles, unlike in the present case where the vehicle is very much claimed by the petitioner and the

owner is also not arrayed as an accused and as such, he cannot be penalised.

11. The further contention in the counter affidavit that the owner of the vehicle was not traceable is again a very unfair and false stand on the part of

the police. The petitioner was very much available before the lower Court itself and had, in fact, filed a petition before the learned Judicial

Magistrate. He has filed a petition before this Court also and it is deplorable for the police to say that the writ petitioner was not traceable. This

statement should erase any possible doubt about the misconduct of the Inspector. He not only behaves vindictively but also chooses to file false

affidavit before this Court.

With the result, I am inclined to record my displeasure as regards the manner in which the police in this case have chosen to behave. The writ

petition is allowed with an exemplary cost of Rs.5,000/-, which shall be paid by the respondent personally. The vehicle shall be released forthwith.