

(1987) 06 MAD CK 0015
In the Madras High Court
Case No : Criminal M.P. No. 5890 of 1987

Thara	Vs	APPELLANT
The Inspector of Police, Vengal		RESPONDENT

Date of Decision : 26-06-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 482

Citation : (1987) 06 MAD CK 0015

Hon'ble Judges : David Annoussamy, J

Bench : Single Bench

Advocate : K.S. Rajagopalan, P.G. Thamaraichelvi, for Public Prosecutor, for the Appellant;

Judgement

1. This is a petition under S. 482, Cr.P.C. The case of the petitioner is as follows :-

His Ambassador Car KLQ 8869 has been declared involved in an offence of transportation of arrack from a neighbouring State to this State on

20-5-1987. The car has been seized. The petitioner filed an application for interim order releasing the car in his favour which was rejected by the

Judicial First Class Magistrate, Trivellore, on 18th June, 1987 on the ground that S. 14(4) of the Tamil Nadu Prohibition Act, 1937, prohibits such

interim order.

2. Learned counsel for the petitioner states that S. 14(4) of the Tamil Nadu Prohibition Act, 1937, as it stood amended after the Tamil Nadu

Prohibition (Amendment) Act 9 of 1979, was struck down by this Court as violative of Constitution in the case reported in D. Shanthalakshmi and

Others Vs. State of Tamil Nadu and Others, , and that therefore the order of the Magistrate is illegal. He therefore states that the extraordinary

remedy u/s 482, Cr.P.C. is not necessary in this case and that this petition may

be treated as a criminal revision petition, since the order is found clearly illegal.

3. Learned Public prosecutor states that S. 14(4) of the Tamil Nadu Prohibition Act, 1937 was struck down by the aforementioned judgment and that there has been no appeal against that judgment.

4. Since S. 14(4) of the Tamil Nadu Prohibition Act has been struck down, the Court has to act in accordance with S. 451, Cr.P.C. It appears

that in this case the car which has produced to the Court as a material object has been handed over to the police for safe custody. But the learned

Public Prosecutor does not come forward to say that there is sufficient accommodation available in the police station to keep the car in a sheltered

space in order to avoid any decay or damage. If the property is to be returned ultimately to the owner of the car after the trial, the owner is entitled

to get back the car in the same condition as it was when it was seized. As there is no statement forthcoming that such a course is possible by the

police, it is just and proper that an interim order is passed giving the custody of the car to the owner under certain conditions.

5. In the result, the petition is treated as a revision petition, the order of the Magistrate is set aside and the Ambassador car shall be handed over to

the petitioner, who shall be in custody thereof under the following conditions -

that he executes a personal bond to the satisfaction of the Court below for an amount of Rs. 20,000/-, undertaking that he will produce the car

whenever it is so ordered.;

that he will give an undertaking not to sell the car or to dispose it of otherwise and that he should not give the car on hire or any purpose. Copy of

the undertaking shall be communicated by the Court to the Regional Transport Officer concerned and to the Insurance Company in which the car

is insured.

6. Before parting with this case, it is necessary to mint out that in many cases the Magistrates are not aware of the fact that S. 14(4) of the Tamil

Nadu Prohibition Act was struck down by this Court in the judgment aforementioned. Steps shall be taken to draw the attention of the Magistrate

to the above judgment.

7. Order accordingly.