

Chandramohan Vs. 1.State Rep by

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Court : Chennai

Decided On : Sep-22-2014

Judge : P.R.Shivakumar

Appellant : Chandramohan

Respondent : 1.State Rep by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 22.09.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Criminal Revision Case (MD)No.397 of 2014 Chandramohan ..Petitioner versus 1.State rep by Sub Inspector of Police, Taluk P.S., Thanjavur District.

(Cr.No.134 of 2014) 2.The Additional Superintendent of Police, Prohibition Wing, Thanjavur District..Respondents Petitions filed under Section 397 read with 401 Cr.P.C., to call for the records and set aside the order of the learned Principal Sessions Judge, Thanjavur dated 11.09.201 in C.A.No.36 of 2014.

!For Petitioner : Mr.T.Senthilkumar ^For Respondents : Mrs.S.Prabha, Government Advocate (Crl.Side) :

ORDER

Heard the arguments advanced by Mr.T.Senthilkumar, learned counsel for the revision petitioner and by Mrs.S.Prabha, learned Government Advocate (Criminal Side) representing the respondents 1 and 2.

2.A case was registered on 22.03.2014 on the file of the Taluk Police Station, Thanjavur as Crime No.134 of 2014 for the alleged offences punishable under Sections 4(1)(a) and 4(1-A) of the Tamil Nadu Prohibition Act, 1937 when 12 bottles of 750 ml capacity of brandy were transported without any licence from Union Territory of Puducherry to Tamil Nadu in a Chevrolet Tavera car bearing Regn.No.TN-51-P-2259.

Accordingly, the said vehicle was seized by the police and the seizure was reported to the Judicial Magistrate No.II, Thanjavur.

On a report submitted by the Sub Inspector of Police, Taluk Police Station, Thanjavur, the Prohibition Officer namely, the Additional Superintendent of Police, Prohibition and Enforcement Wing, Thanjavur who is the second respondent herein passed the impugned order confiscating the said vehicle.

The said order was passed on 01.04.2014 purportedly under Section 14(4)(1) of the Tamil Nadu Prohibition Act, 1937 and G.O.Ms.No.259, P & E Department.

The said order was challenged before the learned Principal Sessions Judge, Thanjavur in C.A.No.36 of 2014 under Section 14 (5) of the Tamil Nadu Prohibition Act, 1937.

It was contended before the learned appellate Judge that the procedure contemplated for passing of the confiscation order was not followed and that therefore, the order was vitiated.

It was also contended therein that the audi alteram partem principle of natural justice was also flouted and a final order that came to be passed earlier on 01.04.2014 was sought to be ratified by issuing a notice which should have preceded the order of confiscation.

The learned Principal Sessions Judge, Thanjavur, after hearing, dismissed the said appeal by his judgment dated 11.09.2014 holding that there was no irregularity in the order passed by the Prohibition Officer namely, the second respondent herein.

Aggrieved by the same, the petitioner has come forward with the present Criminal Revision Case.

3. Section 14 of the Tamil Nadu Prohibition Act, 1937 prescribes how the confiscation of a vehicle, a vessel, a car or an animal shall be made.

It reads as follows:- 14. Confiscation how ordered:- (1) When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the Court decides that anything is liable to confiscation, such confiscation [shall be ordered by the court]. (2) Where, during the trial of a case for an offence against this Act, the Court decides that anything is liable to confiscation, the court shall order the confiscation: Provided that no animal, vessel, cart or other vehicle shall be confiscated under sub-section (1) or sub-section (2) if the court after hearing the owner of such animal, vessel, cart or other vehicle and any person claiming any right thereto, is satisfied that the owner and such person had exercised due care in the prevention of the commission of such an offence]. (3) When an offence against this Act has been committed but the offender is not known, or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector or other Prohibition Officer-in-charge of the district or by any other officer authorized by the State Government in that behalf who [shall order such confiscation: Provided that no such order shall be made until the expiration of fifteen days from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which they produce in support of their claims.]. (4) Notwithstanding anything contained in sub-sections (1) to (3) the Collector or other Prohibition Officer in charge of the district or any other officer authorised 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 of 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 of 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.

(5) Any person aggrieved by an order of confiscation under sub-section (4) may, within one month from the date of the receipt of such order, appeal to the court of session having jurisdiction.].?.

4.Sub Section (1) deals with the power of the Court to order confiscation of anything even if the trial ends in acquittal and Sub Section (2) deals with the power of the Court trying a case for offence against the Tamil Nadu Prohibition Act, 1937 to order confiscation of any animal, vessel, cart or other vehicle, when such animal, vessel, cart or other vehicle has been produced into the Court.

The proviso, provides that before passing any such order under sub Sections (1) and (2).the owner of such animal, vessel, cart or other vehicle claiming any right thereto should be given an opportunity of being heard to satisfy the Court that such person on exercise due care in prevention of the commission of such an offence and that in the event of such a satisfaction, no such confiscation order shall be passed.

5.Sub Section (3) deals with the power of Collector or the Prohibition Officer in-charge of the District or any other officer authorised by the State Government in this behalf to pass an order of confiscation, in case, the offender or any such person who was in possession of the same is not known or cannot be found.

The proviso to sub Section (3) provides a condition that such an order of confiscation shall not be made until the expiration of fifteen days from the date of seizing of the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and without considering the evidence if any, which

they would produce in support of their claims.6.Sub Section (4) spells out the power of the Collector or the Prohibition Officer to pass an order of confiscation whether the prosecution is instituted or not.

Such order shall be without prejudice to any other punishment that may be imposed on the offender.

However, it prescribes condition precedent that before passing an order of confiscation, the owner or the person from whom the said animal, vessel, cart or other vehicle is seized shall be given a notice in writing informing him of the grounds on which the proposed confiscation is to be made.

Apart from issuing such a notice, an opportunity for making a representation in writing within a reasonable time should be given and that such opportunity shall be specified in the said notice.

Apart from those condition precedents for passing a confiscation order under sub Section (4).the next proviso to sub Section (4) says that in such an order of confiscation the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option in lieu of its confiscation to pay an amount not exceeding the market value of such animal, vessel, cart or other vehicle.

7.Sub Section (5) gives a right of appeal to the aggrieved person to prefer within one month from the date of receipt of such order of confiscation and such appeal shall lie to the Sessions Court.

8.In the case on hand, according to the learned counsel for the petitioner, without issuing any show cause notice as contemplated under sub Section (4).an order of confiscation came to be passed on 01.04.2014 by the second respondent herein.

The said impugned order produced along with the revision petition does not indicate any notice preceding the impugned order of confiscation.

It also does not contain any reference to an opportunity given to the revision petitioner of being heard.

The vehicle, according to the records, was seized in the criminal case on 22.03.2014.

If at all, the Prohibition Officer followed the procedure contemplated under Section 14 (4) of the Tamil Nadu Prohibition Act, 1937, he could have issued a notice in writing informing the grounds on which he proposed to confiscate the vehicle.

Such a notice has not been proved to be either sent or served on the revision petitioner between 22.03.2014 and 01.04.2014.

If such a notice was served, then an opportunity should have been given to the petitioner within a reasonable time not exceeding fourteen days thereafter, to make his representation against the order of confiscation.

There is not even a scrap of paper to show that such a notice contemplated under Section 14(4)(i) in compliance with the requirement of (ii) was either sent or served on the revision petitioner.

9. According to the revision petitioner, he was sent to jail as a remand prisoner on 22.03.2014 itself and the above said impugned order was served on him through the jail authorities on 04.04.2014.

After the petitioner was released on bail on 21.04.2014, the irregularity committed by the Prohibition Officer in passing the order dated 01.04.2014 came to be noticed and in an attempt to remove the irregularity, the Prohibition Officer chose to pass a further order in his proceedings Na.Ka.No.CON.13/k.tp.m.gp/Thanjavur/14, dated 24.05.2014 purporting to be issued in compliance with Section 14(4)(i) and (ii) of the Tamil Nadu Prohibition Act, 1937.

It was stated there that the revision petitioner was given an option to pay the market value of the vehicle which was assessed at Rs.4,00,000/- and Rs.58,000/- towards sales tax in lieu of confiscation.

The original order was filed along with the appeal.

A copy of the said order has been included in the typed set of papers. It is available at page 5 of the typed set of papers. The unnumbered paragraphs 1 to 3 of the said order do not refer to any notice preceding the order of confiscation.

The unnumbered paragraph 4 refers to the order passed on 01.04.2014, which was defective in the above said respects as indicated supra.

However, by incorporating the unnumbered paragraph 5 of the said order, the Prohibition officer has made an attempt to cure the defect of not incorporating the option as contemplated in the second proviso to sub Section 4 of Section 14 of the Tamil Nadu Prohibition Act, 1937 found in the earlier order.

10. Even while doing it, the Prohibition Officer has committed a blunder by treating the option as a repurchase by including the sales-tax also to the tune of Rs.58,000/- as the amount to be paid over and above the market value in lieu of the order of confiscation.

The proviso makes it clear that the option shall be to pay an amount not exceeding the market price.

It does not contemplate treating the option as a repurchase attracting levy of sales tax.

How the market value is arrived at is also not known.

No opportunity was given to the petitioner to make a representation before passing of such order and no notice was served on him giving him an opportunity to show cause why the vehicle should not be confiscated.

No opportunity was given to him to satisfy the Prohibition Officer that he had taken all possible care to see that the same was not used for the commission of the offences.

The order of the Prohibition Officer exhibits arbitrariness to the core.

The defective order was sought to be rectified by issuing a subsequent order, when such a defect cannot be rectified.

Even the said order dated 24.05.2014 was not preceded with a notice contemplated under Section 14(4)(i) and by giving of an opportunity under Section 14(4) (ii) of the Tamil Nadu Prohibition Act, 1937.

11. When the respondents were asked to produce the file relating to the passing of the impugned order of confiscation, a file which contains only the 161(3) Cr.P.C., statements recorded by the Investigating officer during investigation alone has been produced by the second respondent through the learned Government Advocate (Criminal Side) for the perusal of this Court.

Not even a copy of the FiRs. Information Report, even the report or at least a copy of the report submitted by the Sub Inspector of Police based on which the impugned order of confiscation came to be passed, is found in the file.

There is nothing on record to show the attraction of Section 4(1-A) of the Tamil Nadu Prohibition Act, 1937.

The second respondent seems to have ignored it and to tell the fact, the second respondent did not apply his mind at all and he was very much bent upon passing an order of confiscation flouting the Rules.

Hence, as rightly contended by the learned counsel for the petitioner, the second respondent has passed the order dated 01.04.2014 as a confiscation order without following the mandatory provisions provided under Section 14 (4) (i)(ii) of the Tamil Nadu Prohibition Act, 1937.

Instead of trying to cure the defect by the subsequent correction the Prohibition Officer could have cancelled the earlier order and given notice to the revision petitioner informing that the order was cancelled because of the defects in the procedure in passing order and thereafter could have passed a fresh order following the due procedure as contemplated under the provisions.

The same was also not done.

All these glaring defects which go to the root of the case have not caught the attention of the learned appellate Judge, namely the Principal Sessions Judge,

Thanjavur and the learned Principal Session Judge, Thanjavur proved to be not inferior to the Prohibition Officer in exhibiting the arbitrariness.

12. For all the reasons stated above, this Court comes to the conclusion that the order of confiscation passed by the second respondent 01.04.2014 is a nullity and the subsequent order dated 24.05.2014 is also liable to be set aside.

The judgment affirming the said orders of the learned appellate Judge is also liable to be set aside.

13. Accordingly, the Criminal Revision Case is allowed.

The judgment of the learned appellate Judge confirming the confiscation order is set aside.

The order of confiscation dated 01.04.2014 and the further order of confiscation dated 24.05.2014 passed by the second respondent are set aside.

To The Principal Sessions Judge, Thanjavur.

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