



Citation : CDJ 2010 MHC 840

Court : High Court of Judicature at Madras

Case No : Contempt Petition No.1156 of 2009

Judges : THE HONOURABLE MRS. JUSTICE R. BANUMATHI & THE HONOURABLE MR. JUSTICE P.P.S. JANARTHANA RAJA

Parties : David Versus Shakthivel, Inspector of Police-cum-Station House Officer

Appearing Advocates : Mr.P.S.Raman, Advocate General Amicus curie. For Petitioner: K.S. Ilangovan for M/s.Achari and Antoni Associates, Advocates. For Respondent: P. Kumaresan, Public Prosecutor.

Date of Judgment : 08-01-2010

Head Note :

Contempt of Courts Act - Section 10 -

Comparative Citations:

2010 (1) LW(Cri) 129 , 2010 (1) MLJ(Cri) 929

Judgment :

(PRAYER: Contempt Petition is filed under Sec.10 of Contempt of Courts Act praying to punish the Respondent for contempt of Court in wilfully and deliberately disobeying the orders passed by the Judicial Magistrate No.I, Tindivanam dated 27.07.2009 in C.M.P.No.1737/2009.)

R. BANUMATHI, J.

Alleging disobedience of ordering production of Vehicle bearing registration No.TN-21-J 2952 in C.M.P.No.1737/2009 on the file of Judicial Magistrate No.I, Tindivanam, Petitioner has filed this Contempt Petition.

2. Brief facts are as follows:- On 03.07.2009 a case was registered for the offence under Sec.4(1)(aaa) of Tamil Nadu Prohibition Act, 1937 and the vehicle bearing registration No.TN-21-J 2952 [Maxicab Tempo Traveller] was intercepted which contains spurious liquor from Pondicherry and the case was registered in Crime No.1214/2009 under Sec.4(1)(aaa) of TNP Act and vehicle bearing registration No.TN-21-J 2952 was seized. Driver Kumar was arrested and produced before the Judicial Magistrate No.I, Tindivanam on 03.07.2009 and remanded to judicial custody. Under Sec.14(4) of TNP Act, steps were taken to proceed with the confiscation of vehicle involved in the offence and to initiate confiscation proceedings, vehicle was handed over to the Additional Superintendent of Police, Prohibition Enforcement Wing, Villupuram who is the competent authority under the Act by Memo dated 23.07.2009.

3. Vehicle bearing registration No.TN-21-J 2952 was seized on 03.07.2009. Seizure of the vehicle bearing registration No. TN-21-J 2952 in Crime No.1214/2009 was reported to the Magistrate on 03.07.2009. In the intimation of seizure of vehicle dated 03.07.2009, it was made clear that the proceedings are initiated for confiscation of the vehicle as is seen from the following:-

@03/07/09e;njpp 13/00 kzpf;F jpz;otdk;?ghz;orhiy kuf;fhzk; fpuh!; nuhL re;jpg;gpy; rhuha bua;od; nghJ rhuhak; vLj;Jtu gad;gLj;jg;gl;l khh;\$pdpy; fz;l thfdk; ifg;gw;wg;gl;lJ/ thfdj;ij 1937k; Mz;L kJtpyf;F rl;lk; kw;Wk; jpUj;j knrhjh rl;lk; 1990 gphpt[ 14(3)d;go muRf;F Mjhak; bra;a[k; bghUl;L muRlikahf;fp nkW;bfhs;sg;gl;L tUtjhy; nkW;fz;l tHf;F brhj;jhd thfdj;ij ePjpkd;wj;jpy; xg;gilf;f ,aytpy;yiY/@

In the said intimation thus it is clear that confiscation proceedings are initiated to confiscate the vehicle [TN-21-J 2952]

4. Petitioner filed C.M.P.No.1737/2009 under Sec.457 Cr.P.C. in which notice was ordered to the Investigating Officer. On 24.07.2009, Magistrate was further informed that confiscation proceedings have been initiated and that the vehicle could not be produced before the Court. Even though, the Magistrate was informed about the confiscation proceedings, placing reliance upon 2005 (1) LW (CrI) 93 [G.Chandramohan v. State by Inspector of Police, PEW, Kumbakonam (Tk), Thanjavur District], by order dated 27.07.2009, the Judicial Magistrate No.I, Tindivanam directed the Police [SHO, PEW, Tindivanam] to produce the vehicle bearing registration No.TN-21-J 2952 involving in Crime No.1214/2009 before the Court on 30.07.2009. Stating that pursuant to the order of Court, vehicle was not produced before the Court and alleging disobedience of the said order, Petitioner has filed this Contempt Petition.

5. Heard Mr.P.S.Raman, learned Advocate General as Amicus Curie and Mr.K.S.Ilangovan, learned counsel for the Petitioner and Mr.P.Kumaresan, learned Public Prosecutor for Respondent.

6. Learned counsel for Petitioner contended that Petitioner was not served with any notice regarding confiscation and Petitioner has no knowledge about the said confiscation proceedings. Placing reliance upon 2005 (1) LW (CrI) 93 [G.Chandramohan v. State by Inspector of Police, PEW, Kumbakonam (Tk), Thanjavur District], it was further contended that even though confiscation proceedings was initiated, power of the Magistrate is not in any way affected by the Legislative changes in Tamil Nadu Prohibition Act and in appropriate cases, it is fully open to the Magistrate to pass an order of interim release of a seized vehicle and Respondent has wilfully disobeyed the order of the Court and is liable for contempt.

7. Producing the C.D. File and drawing attention of the Court to the intimation sent to the Magistrate on 03.07.2009 and 24.07.2009, learned Public Prosecutor submitted that Respondent has informed the Court about the confiscation proceedings and therefore, the vehicle could not be produced as directed by the Magistrate. It was further submitted that confiscation order was passed on 08.09.2009 and there is no wilful and deliberate disobedience of the order of the Court.

8. As it involved examination of powers of Magistrate under Sec.451 Cr.P.C. vis-a-vis under Sec.14(4) of TNP Act and power of the Executive to order confiscation of the vehicle involved in the commission of prohibition offence, we have requested the learned Advocate General to advance arguments as Amicus Curie.

9. Drawing our attention to AIR 1983 Madras 232 [D.Shanthalakshmi and others v. State of Tamil Nadu and others] and 1996 (II) CTC 436 [The Commissioner of Police, Egmore, Madras-8 and others v. R.Kothandapani], learned Advocate General made meticulous submissions as to the powers of Executive under Sec.14(4) of TNP Act vis-a-vis powers of Magistrate under Sections 451 and 457 Cr.P.C. Learned Advocate General submitted that when initiation of confiscation proceedings under Sec.14(4) of TNP Act has been brought to the notice of the Court, discretion of the Magistrate under Sections 451 or 457 Cr.P.C. is to be exercised reasonably and with care and caution, keeping in view

the confiscation proceedings initiated under Sec.14 (4) of TNP Act.

10. The points falling for our consideration is whether wide power of Executive under Sec.14(4) of TNP Act transgresses into the power of the Court under Sections 451 or 457 Cr.P.C. In case of overlapping, powers of Court with Executive the extent of exercise of discretion by the Court is yet another point falling for our consideration.

11. In order to appreciate the submissions, it is necessary to examine the relevant provisions of Tamil Nadu Prohibition Act and Criminal Procedure Code dealing with return of property. Section 14 of Tamil Nadu Prohibition Act reads as under:-

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 omission 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 authorised 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:

12. Prior to amendment as it stood, as per Section 14(4) of TNP Act that 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 authorised by the State Government in that behalf shall detain any animal, vessel, cart or other vehicle used in the commission of such offence against this Act till the case is disposed of by the court and notwithstanding anything in the Criminal Procedure Code, no interim order regarding the disposal of such property shall be passed by the court till the case is disposed of.

13. Section 14(1) and 14(2) of TNP Act and old provisions of Sec.14(4) i.e. prior to substitution were challenged in Shanthalakshmi's case [AIR 1983 Madras 232]. Pointing out the embargo in passing interim order regarding disposal of property till the case is disposed of, Division Bench of this has held that approach to the Court for getting redressal itself has been prohibited by Sec.14(4) of TNP Act. While upholding Sections 14(1) and 14(2) of TNP Act, Court struck down Sec.14(4) as it offends Article 19(1)(g) and Article 300-A of Constitution of India and is ultra vires.

14. After comparing Sec.14(4) of TNP Act prior to substitution by Act 24 of 1990 w.e.f. 22.05.1990

with sub-section (4) of Section 14, in 1996 (II) CTC 436 [The Commissioner of Police, Egmore, Madras-8 and others v. R.Kothandapani], First Bench of this Court held as under:-

"Thus, it is clear that sub-section (4) of Section 14 of the Act, as it stood prior to substitution, subjected the confiscation proceedings by the Collector or other Prohibition Officer in charge of the District or any other Officer authorised by the State Government in that behalf to the result of the prosecution, whereas, the substituted section has removed such as embargo. Consequently, it would now be open to the Collector or other Prohibition Officer in charge of the District or any other Officer authorised by the State Government in that behalf to proceed with the confiscation proceedings if such an Officer is satisfied that an offence has been committed against the Act, irrespective of the fact whether or not a prosecution is justified for such an offence. Such a proceeding would be without prejudice to any other punishment to which the offender is liable, be it in the prosecution that may be launched in the Court or any other punishment to which the offender is liable under the Act. It also follows that even after the confiscation under sub-section (4) of Section 14 of the Act, it will still be open to the Collector or other Prohibition Officer in charge of the District or any other Officer authorised by the State Government in that behalf to prosecute the owner or the person found in possession of the vehicle, animal, vessel or cart used in the commission of the offence. The words, "whether or not a prosecution is justified for such offence" and the non-obstante clause occurring in the substituted sub-section (4) of Section 14 make all the difference between the old and the new sub-section (4) which empowers the Collector or other Prohibition Officer in charge of the District or any other Officer authorised by the State Government in that behalf to proceed with the confiscation proceeding without launching a prosecution."

15. Under Section 14(4) of TNP Act, the authorities are vested with powers subject to judicial review. It is incumbent on the authorities before exercising their power of confiscation to afford an opportunity to the offender, since remedy of appeal is provided under the Act that too before the Court of Sessions. In our considered view, the provisions of Section 14(4) of the Act do not transgress into powers of Court nor unreasonable on the contrary have nexus to the object achieved.

16. Section 451 Cr.P.C. enables the Court to pass orders for custody or disposal of property during enquiry or trial. Section 452 Cr.P.C. comes into operation on conclusion of enquiry or trial. Section 457 Cr.P.C. is a general provision applicable to all cases where seizure of vehicle is reported to a Magistrate and vehicle is not produced before a Criminal Court. Sections 451 and 457 Cr.P.C. some what overlap. Section 457 Cr.P.C. reads as under:-

"S.457. (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

17. Section 457 Cr.P.C. deals generally with all cases where seizure of property is reported by the police-officer to the Magistrate and vehicle is not produced before Criminal Court. The Magistrate can act under this section only when the seizure of the property is reported to him. He is entitled to do one of three things: (a) he may pass an order regarding the disposal of the property; or (b) deliver it to the person entitled to its possession subject to conditions, if any, imposed; or (c) in his absence pass an order for its custody and production.

18. Section 14 (1) of TNP Act deals with powers of Court to pass an order of confiscation at the conclusion of the trial whether the case ends in conviction or acquittal. Section 14(1) of TNP Act is akin to Section 452 Cr.P.C. Under Section 14(2) of TNP Act, Court is empowered to pass an order of confiscation during the trial of a case for an offence under Tamil Nadu Prohibition Act. Powers of Court under Section 14(2) of TNP Act is akin to Section 451 Cr.P.C.

19. Section 14(4) of TNP Act starts with non obstante clause vesting with power of Executive/District Collector or other Prohibition Officer incharge of the District or any other Officer authorised by the State Government, pass orders of confiscation of vehicle involved in the commission of offence against Tamil Nadu Prohibition Act notwithstanding whether prosecution is instituted or not. Main question falling for consideration is when confiscation proceedings are initiated under Section 14(4) of TNP Act, whether it takes away jurisdiction of the Court to exercise powers under Central enactment viz., under Sections 451 or 457 Cr.P.C.

20. We may note that Section 14(4) of TNP Act prior to substitution by Act 24 of 1990 was struck down as unconstitutional, since old provision has taken away the power to pass interim orders till the case is disposed of. In Shanthalakshmi's case Division Bench has also observed that right to approach the Court for getting redressal with regard to property detained has been prohibited under Section 14(4) of TNP Act (prior to substitution) and the same was struck down as ultra vires the Constitution. Now to say that Court cannot exercise the powers once confiscation proceedings are initiated under Section 14(4) of TNP Act as it stands subsequent to the amendment would amount to status quo ante Shanthalakshmi's case. Applying the ratio of Shanthalakshmi's case, in our considered view Section 14(4) of TNP Act cannot take away the jurisdiction of the Court to exercise the powers under Sections 451 and 457 Cr.P.C., since Court draws its power from the Central enactment.

21. Learned Advocate General submitted that when the vehicle is seized which is involved in a prohibition offence, power of Court and Executive to order confiscation of vehicle involved is overlapping. Code of Criminal Procedure is Central enactment made by virtue of entry to List III of 7th Schedule to the Constitution. Learned Advocate General fairly submitted that since power of Executive and power of Court in dealing with the vehicle and passing orders of confiscation is overlapping to certain extent, Section 14(4) of TNP Act, a State enactment cant not take away exercise of jurisdiction of Court under Sections 451 or 457 Cr.P.C. But the learned Advocate General hastened to submit that exercise of power by the Court must be with extreme care and caution, keeping in view the object and spirit of Section 14(4) of the Act which is both punitive and deterrent.

22. As rightly submitted by the learned Advocate General, Section 14(4) of the Act does not take away the jurisdiction of the Court and exercise of power under Sections 451 or 457 Cr.P.C. But discretion of Court has to be exercised judiciously and exercised with due care and caution. Where seizure of vehicle involved in an offence of prohibition reported to the Magistrate, exercise of discretion and ordering of interim custody under Sections 451 or 457 Cr.P.C. is not automatic. Notwithstanding the involvement of the vehicle in the commission of prohibition offence, if there is automatic exercise power by the Court, Section 14(4) of the Act would become a dead letter. In our view, order of confiscation of a vehicle involved in the commission of offence under Section 14(4) of TNP Act is not only punitive but also deterrent. While so, when the vehicle is involved in the commission of a prohibition offence, exercise of discretion by the Court with care and caution would serve various purposes. While before passing any order in respect of the vehicle involved in the commission of prohibition offence, Court should keep in view the spirit of Section 14(4) of the Act and the benevolent objects of Tamil Nadu Prohibition Act.

23. Before proceeding to exercise the jurisdiction under Sections 451 or 457 Cr.P.C. in respect of the vehicle involved in the commission of prohibition offence, Court has to ascertain from the Prosecutor whether any confiscation proceedings has been initiated by the District Collector/Prohibition Officer or authorised Officer as contemplated under Section 14(4) of TNP Act. Only after affording sufficient

opportunity, Court could proceed to exercise its jurisdiction and keeping in view the spirit of Section 14(4) of TNP Act, Court to pass appropriate speaking order.

24. It is pertinent to note that as against the order passed under Section 14(4) of TNP Act, appeal lies before the Court of Sessions having jurisdiction. For instance let us assume that order of confiscation has been passed by the District Collector or other Prohibition Officer incharge of the District or any other authorised officer. Under Section 14(5) of TNP Act, any person aggrieved by the order of confiscation under Section 14(4) of the Act within one month may appeal to the Court of Sessions having jurisdiction. In such case, where an order of confiscation has been passed, if Magistrate has to pass an order for interim custody, evidently Magistrate would be transgressing upon the powers of the Executive and Sessions Judge. To avoid such situation, in dealing with the vehicles involved in a prohibition offence, exercise of powers of the Court under Sections 451 or 457 Cr.P.C. should always be with due care and caution.

25. In the instant case, Investigating Officer has issued notice to the owner of the vehicle David [Petitioner] and notice could not be served upon the Petitioner. It is stated that Petitioner deliberately evaded service of notice. In the mean time, Petitioner filed C.M.P.No.1356/2009 in which notice was sent to the Respondent. Again on 24.07.2009, Respondent-Inspector of Police informed the Court about the steps taken for confiscation of the vehicle and the other steps taken in serving the notice upon the Petitioner. In spite of categorical assertion about the confiscation proceedings, Magistrate proceeded to order production of vehicle bearing registration No.TN-21-J 2952 before the Court on 30.07.2009. In our considered view, the Magistrate does not seem to have afforded sufficient opportunity to the Investigating Agency. We are of the view that the Magistrate did not keep in view the spirit of Section 14(4) of TNP Act nor exercised due care and caution before passing order for interim custody nor has recorded reasons to order interim custody of the vehicle. Investigating Agency was under bonafide belief that since vehicle was produced before the Prohibition Officer incharge of the District, it was incumbent upon them to produce the vehicle before the Court. Having regard to the facts and circumstances of the case, we do not find any wilful disobedience of the order of Court dated 27.7.2009 to find the Respondent guilty of Contempt of Court and the Contempt Petition is liable to be dismissed.

26. It is stated by the learned Public Prosecutor that confiscation order has been passed on 08.09.2009 and the vehicle was sold in public auction and the amount was also deposited. Since final order of confiscation has been passed by the Prohibition Officer under Section 14(4) of TNP Act, it is open to the Petitioner to agitate the same by filing an appeal as contemplated under Section 14(5) of TNP Act before the Court of Sessions having jurisdiction.

27. Hitherto learned single Judges have taken the view that exercise of jurisdiction under Sections 451 and 457 Cr.P.C. and passing order for interim custody of the vehicle is automatic. Subordinate Courts hitherto following the decisions reported in 1993 MLJ (Criminal) 543 [Shajahan and another v. State, through Dy. Superintendent of Police, PEW, Nagapattinam]; 1997 MLJ (Criminal) 705 [G.Natarajan v. State, represented by Superintendent of Police, PEW, Chengalpattu MGR Zone, Madras] and 2005 (1) LW (Cri) 93 [G.Chandramohan v. State by Inspector of Police, PEW, Kumbakonam Taluk] and automatically passing orders for interim custody of the vehicle involved in the commission of prohibition offence. The views taken by the learned single Judges shall stand modified in terms of the following observations.

28. We deem it fit to issue the following directions.

"Whenever seizure of properties involved in the commission of offence under Prohibition Act, exercise of power is not automatic. Court should afford sufficient opportunity to the prosecution to inform the Court about the steps taken by the Investigating Agency. Keeping in view the spirit of Section 14(4) of TNP Act, Court on its own should ascertain whether any confiscation proceedings

has been initiated and the stage of confiscation proceedings.

"After affording sufficient opportunity to the prosecution and only after ascertaining about the steps taken for initiation of confiscation proceedings, Court could exercise its discretion under Sections 451 or 457 Cr.P.C. Court could judiciously exercise its discretion with due care and caution keeping in view the spirit of Section 14(4) of TNP Act. Exercise of discretion under Sections 451 and 457 Cr.P.C. is only after affording sufficient opportunity to the prosecution to get instructions. Subordinate Courts are directed to insist the Assistant Public Prosecutor/Public Prosecutor to file written Memo as to the steps taken under Section 14(4) of TNP Act or otherwise could only on receipt of written memo, Court could proceed to exercise its power under Sections 451 or 457 Cr.P.C.

"In case if the Court orders interim custody of vehicle, the order should be speaking order recording reasons to order interim custody of the vehicle. In case if the Court orders interim custody of the vehicle, Court should obtain necessary undertaking from the owner of the vehicle to produce the vehicle as and when directed and send copy of undertaking to the District Collector/Prohibition Officer incharge of the District or other authorised Officer in that behalf by the Government along with copy of the order passed by the Court.

We direct the Registry to place this order before the Hon'ble The Chief Justice for getting approval for being circulated to all the Subordinate Courts in the State of Tamil Nadu."

29. With the above observations and directions, the Contempt Petition is dismissed. No costs.

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