

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WP Nos.28989 and 29159 of 2016

and

WMP No.25212 of 2016 in WP No.29159 of 2016

C.R.Tamilvanan ... Petitioner in both WPs.

Vs

1. The Commissioner of Police,
Salem.
2. The Inspector of Police,
Sooramangalam Police Station,
Sooramangalam, Salem Town. ... Respondents in both WPs.

Prayer in WP No.28989 of 2016:- Writ Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Mandamus, directing the 1st respondent to consider the petitioner's representation dt. 12.07.2016 as expeditiously as possible by passing appropriate orders, thereon, thereby entrusting the entire investigation of the Cr. No.386/ 2016 to some other officer under the control of the Commissioner of Police, Salem in the light of the orders of the Honourable High Court in Crl. O.P. No.29659 of 2015 dt. 07.01.2016 and in Crl. OP. No.10841 of 2016 dt. 26.05.2016 and in the light of the status quo order passed by the Sub-Court, Dindigul in IA No.21/16 in O.S. No.16/16.

Prayer in WP No.29159 of 2016:- Writ Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Mandamus, directing the 1st respondent to consider the petitioner's representation dt.12.07.2016 as expeditiously as possible by passing appropriate orders, thereon, thereby directing the concerned officers working under his esteemed control, to register FIR against (1) Duraiswamy, residing at No.3-47, (New No.3-221) KSV Nagar, Salem Town (2) Area Manager, Sriram Equipments Finance Co., Ltd., Theerthamalai Commercial Complex, Salem and Mr.Manivarman, Inspector of Police, Sooramangalam Police Station, Salem Town for theft and unauthorized removal of Petitioner's Tata Machine (Tata Hitachi Ex.350 LCH Super Machine-Chase No.350-V0473) from the place, which was stationed within the jurisdiction of 2nd

respondent subsequent to the order dated 26.05.2016 passed by the Hon'ble High Court in CrI.OP.No.10841 of 2016 directing registration of FIR on the petitioner's complaint.

For Petitioner : M/s.Shanmugha Associates
in both WPs.

For Respondents : Mr.C.Emalias,
in both WPs. Addl. Public Prosecutor

COMMON ORDER

These petitions have been filed to direct the 1st respondent to consider the petitioner's representation dated 12.07.2016 as expeditiously as possible.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. According to the petitioner, he has purchased a Tata Hitachi Ex.350 LCH Super Machine-Chase No.350 V 0473 (JCB) from one Mr.Duraisamy for a valuable consideration and that the said JCB has been forcibly taken away by the Area Manager of Sriram Equipments Finance Company Limited and Mr.Duraisamy, in connection with which, he has given a complaint based on which, an FIR has been registered in Cr.No.386 of 2016 on 22.06.2016 u/s 417, 379 IPC against (1) Area Manager, Sriram Equipments Finance Company Limited and (2) Duraisamy, Salem.

4. Under such circumstances, the petitioner is before this Court for a direction to the respondent police to consider his representation dated 12.07.2016 and pass appropriate orders.

5. The Supreme Court, in Anup Sarmah Vs. Bhola Nath Sharma (2013) 1 SCC 400 has clearly stated that the financier has got the rights of possession of a vehicle which is under hire purchase agreement.

6. Even according to the petitioner, the said JCB is under hire purchase agreement with Sriram Equipments Finance Company Limited and the borrower is Duraisamy in whose name the vehicle stands. Whether any amount is due from Duraisamy to Sriram Equipments Finance Company Limited is a disputed question of fact about which this Court is not concerned.

7. Further, whether the petitioner has purchased the JCB for a valuable consideration from Duraisamy is also a disputed question of fact about which also, this Court cannot embark upon an enquiry. The fact remains that a FIR in Cr.No.386 of 2016 is pending.

8. It is also seen that this petitioner has filed a suit in O.S.No.16 of 2016 before the Sub Court, Dindigul for an order of interim injunction restraining Duraisamy and Sriram Equipments Finance Limited from dispossessing him with JCB and an interim order appears to have been granted in favour of the petitioner on 06.01.2016.

9. Under such circumstances, the direction as prayed for by the petitioner to the police to dispose of his representation dated 12.07.2016 cannot be issued in the light of the judgment of the Division Bench of this Court in Ingaci Vs. Commissioner of Devakkottai Municipality, Sivagangai District [2010 (2) LW 785.

With the above observations, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Salem.

2. The Inspector of Police,
Sooramangalam Police Station,
Sooramangalam, Salem Town.

2 ccs to M/s.Shanmugha Associates, Advocates, sr.47894

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kra 22.09.2016