

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.30866 OF 2016

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking a Writ of Mandamus declaring the action of the second respondent in seizing the Motor Cycles bearing Nos.TS 05 EB 4122 and AP 24 AW 8302 of the petitioners, as illegal and arbitrary.

2. Heard the learned counsel for the petitioners, the learned Assistant Government Pleader for Civil Supplies appearing for respondent No.1, and the learned Assistant Government Pleader for Home appearing for respondent No.2.

3. The first petitioner claims to be the owner of the Motor Cycle bearing No.TS 05 EB 4122 and the second petitioner claims to be the owner of the Motor Cycle bearing No.AP 24 AW 8302. A perusal of the record reveals that on 18.07.2016 the second respondent seized the Motor Cycles alleging that the petitioners were transporting PDS rice without any permission or licence. The second respondent registered a case in Crime No.440 of 2016 under Sections 420 and 406 I.P.C., and Section 7 of the Essential Commodities Act, 1955 against the petitioners.

4. Whether the petitioners were transporting the rice knowing fully well that it is PDS rice or not is purely a disputed question of fact, which can be decided during the course of trial only. If this Court expresses any opinion on that aspect, the same may cause prejudice to one of the parties to the proceedings. If the vehicles are kept under the custody of the second respondent till disposal

of the case, the same may cause irreparable loss and hardship to the petitioners. So also, if the vehicles are released unconditionally, it may not be possible for the respondents to take appropriate action against the petitioners in the event of the vehicles being liable for confiscation or fine.

5. At the time of arguments, the only relief sought by the learned counsel for the petitioners is to direct the second respondent to release the vehicles on furnishing a bank guarantee by the petitioners. The learned Assistant Government Pleaders appearing for the respondents also consented for the same.

6. Having regard to the facts and circumstances of the case and also the submissions made by learned counsel for both parties, the second respondent is hereby directed to release the Motor Cycle bearing No.TS 05 EB 4122 in favour of the first petitioner on her furnishing a bank guarantee for an amount of Rs.25,000/- (Rupees Twenty Five Thousand only). The second respondent is further directed to release the Motor Cycle bearing No. AP 24 AW 8302 in favour of the second petitioner on his furnishing a bank guarantee for an amount of Rs.25,000/- (Rupees Twenty Five Thousand only). The petitioners are directed to file an undertaking before the second respondent that they will not create any third party interest over the vehicles in question, they will not alter the nature of the vehicles till disposal of the case and that they will produce the same as and when required before the authorities.

7. With the above directions, the Writ Petition is disposed of. No costs.

8. Consequently, Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. No costs.

T.SUNIL CHOWDARY, J

Date: 14.09.2016
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