

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.35329 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

‘..to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the seizure of the petitioner vehicle tractor and trailer bearing no.AP-31-TH-3591 & AP-02-V-4032 is illegal, arbitrary and violative of Articles 19(1)(g)& 21 of the Constitution of India and consequently direct the respondents to release the petitioner vehicle tractor and trailer bearing no.AP-31-TH-3591 & AP-02-V-4032 and pass such other order...’

2. I have heard the submissions of *Sri N. Gangadhar*, learned counsel for the petitioner, and of the learned Assistant Government Pleader representing the respondents 3 and 4. I have perused the material record.

3. Learned counsel for the petitioner would submit as follows: ‘The tractor and trailer were seized, on 28.09.2017, while transporting sand. The petitioner has no knowledge about the transportation of sand. The same was done by the driver without his consent or knowledge. The sand was said to have been transported for house construction. The 2nd respondent cannot seize the tractor and trailer on the ground that sand is being transported. The petitioner submitted an application to the 3rd respondent requesting to release the tractor and trailer by collecting necessary penalty, but so far no decision was taken. The vehicle is now kept in the open place that too with the load. The vehicle will get damaged if it is allowed to lie in that condition. The petitioner is being put to hardship and loss. The income from the tractor and trailer is the only source of livelihood of the petitioner. Hence, the writ petition is filed. In cases with identical facts, this Court is releasing the seized vehicles

and hence, similar orders may be passed in this writ petition. In view of the free sand policy in the State of Andhra Pradesh, there is no requirement of permit for transportation of sand and that the tractor and trailer ought not to have been seized.'

4. Learned AGP on written instructions, dated 27.10.2017, which are placed on record, would submit that the seized tractor and trailer were involved in commission of theft of sand worth Rs.1,000/- at Gosthani river bed area and that based on the occurrence report a case in crime no. 76 of 2017 was registered by the SHO, Padmanabham Police Station, for the offences punishable under section 379 of IPC against the petitioner herein and others and that investigation is under progress and that notices under section 41-A of the Cr.P.C. were issued to the other accused 2 and 3 and that the petitioner is absconding and that Form 66, dated 27.10.2017, was filed before the Court and that after completion of investigation a final report will be filed before the Court and that the vehicle will be released after passing of the release orders as per law. Though it is stated that the property form 66 was filed before a Court, it is not stated as to whether the learned Magistrate of the said Court has accepted the report of production of property or returned the same; further, the details of the Court of the learned Magistrate before which the tractor and trailer were said to have been deposited or produced are not stated.

5. The offence alleged is theft of sand worth Rs.10,000/-. Having regard to the submissions and without expressing any views on the merits of the matter, this Court, at this stage, is satisfied that in the facts and circumstances of the case, the interim custody of the tractor and trailer can be given to the petitioner after imposing necessary conditions as release of the seized vehicles by the Magistrates or the authority concerned is a rule and the rejection is an exception. Powers of the Court/ competent authority, wherever and whenever

exercisable, are to be properly and promptly exercised to see that vehicles are not kept for a long time, that is, for more than fifteen days to one month at the police station or a public office or the Court house, in any case. Keeping any vehicle idle in an open place exposing it to Sun, Rain and inclement/ rough Weather without any protection would lead to deterioration of its value and irreparable damage. Instead of allowing a vehicle to lie idle and rot in front of a police station or a public office or in the yard of a Court House, it is apposite to give interim custody of the vehicle to an eligible applicant as such a course helps not only in keeping the vehicle in the same good condition but also inures for the benefit of the ultimate successful party. There are no compelling reasons, in the case on hand, to not to pass an order giving interim custody of the subject vehicles to the petitioner.

6. Accordingly, the Writ Petition is allowed. In case, the seizure of the tractor and trailer is reported to the Court of the learned Magistrate as per procedure and/or the same are deposited/produced before the Court, the learned Magistrate concerned shall release and give interim custody of the tractor and trailer bearing No. AP-31-TH-3591 & AP-02-V-4032 to the petitioner, however, on the petitioner furnishing personal bond and third party sureties to the satisfaction of the learned Magistrate concerned and on further undertaking that he will not alienate or transfer the subject tractor and trailer in any manner and will maintain them in the same good and road worthy condition without changing any of their features and major parts and shall produce them along with its vehicular documents at a specified place or before a specified authority as and when directed. However, in case the seizure of the tractor and trailer is not already reported to the Court concerned as per law and the same are not already produced/ deposited before the Court of the competent Magistrate, the competent authority shall release and give interim custody of the tractor and trailer to the petitioner however, on the petitioner

furnishing personal bond and third party surety/ sureties to the satisfaction of the said competent authority and on further giving an undertaking on the same lines as indicated supra. On the petitioner approaching the Court or the competent authority, as the case may be, and making a request, along with a copy of this order, for release of the tractor and trailer, the necessary exercise as indicated supra shall be completed within two days from the date of the request of the petitioner.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

06.11.2017

Note:-
Issue CC by 07.11.2017
(B/ o)
RAR



M. Seetharama Murthi, J