

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 05.12.2018
CORAM:
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM
W.P.No.30292/2018
&
WMP.No.35351/2018

Senthilmurugan

.. Petitioner

Vs

The State rep.by
The Inspector of Police
Vridhachalam Police Station
Vridhachalam, Cuddalore District. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondent to release the vehicle bearing Registration No.TN-88-A-2319 and to hand over the custody of the same to the petitioner.

For Petitioner : Mr. S.Ayyadurai

For Respondent : Mr.V.Jayaprakash Naryanan
Government Pleader [In-charge]

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal. Mr.V.Jayaprakash Narayanan, learned Government Pleader [In-charge] appears on behalf of the respondent.

2 The writ petitioner claims to be the owner of the Multi Axle Goods Tata LPT Lorry bearing Regn.No.TN-88-A-2319 and is having a valid Registration Certificate issued by the Regional Transport Office [RTO], Namakkal South as well as valid Insurance Coverage. The petitioner would further claim that he is also having a valid National Permit [Goods] Authorisation Certificate issued by the Transport Department of Tamil Nadu. It is averred by the petitioner that services of his vehicle were engaged by M/s.New Bharat Blue Metal, No.1/19, Muthu Nagar, Naranammalpuram, Sankarnagar, Tirunelveli District for

transporting Mineral Sand [M-Sand] from Tirunelveli to Chennai, and accordingly, M-Sand was loaded and the said vehicle was entrusted to Tr.S.Sivamani, driver for transporting the said sand in the vehicle from Tirunelveli to Chennai. The M-Sand manufacturer, M/s.New Bharat Blue Metal has also issued necessary Tax Invoice No.BB 219 dated 28.10.2018 along with the Certificate of Registration in Form No.D granted by the Collector of Tirunelveli District for transportation of storage minerals under the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules, 2011, bearing Registration No.TN-TNV/ 8377/2017 dated 13.06.2018. The Deputy Director of Geology and Mining, Tirunelveli had also issued Transport Permit No.0034 with Transit Pass Serial Nos.4415, 4416 and 4198 dated 28.10.2018 for transporting 15 cu.mts. of M-Sand from Tirunelveli to Chennai and the said material was despatched from the stockyard of Tirunelveli at 08.20 p.m., on 28.10.2018. The petitioner would further aver that on the way to Chennai, the driver of the vehicle who is hailing from Murugankudi near Thittakudi, went to his house with the vehicle on the evening of 29.10.2018 and on the next day, on 30.10.2018, the driver started the vehicle towards Chennai via Vridhachalam-Ulundurpet road and at 10.00 a.m., on the same day, the vehicle was intercepted by the respondent police and asked for the production of documents and accordingly, the driver produced the documents. However, not satisfied with the same, the respondent has registered a case in Cr.No.622/2018 on 30.10.2018 against the driver of the vehicle for the alleged commission of the offences u/s.379 and 430 IPC and under section 21[1] of Mines and Minerals [Development and Regulation] Act, 1957 and he was arrested and subsequently, enlarged on bail.

3 The writ petitioner who is the owner of the vehicle, on becoming aware of the same, prayed for the release of the vehicle by filing a petition u/s.451 read with 457 Cr.P.C., before the jurisdictional Magistrate, praying for return of the said vehicle and the said petition was returned by the said Court stating that the Court has not power in the light of the order dated 24.09.2018 made in WP [MD] No.7595/2018 passed by a Division Bench of the Madurai Bench of this Court. The grievance expressed by the petitioner is that the vehicle has been purchased by availing loan and unless the vehicle is run and income is generated, the petitioner is not in a position to service to debt incurred by way of loan and therefore, he came forward to file the present writ petition, praying for the return / release of the vehicle.

4 The writ petition was entertained on 19.11.2018 and the learned Government Pleader [In-charge] accepted notice and sought time to get instructions and accordingly, it was

adjourned to 26.11.2018 and on that day, the learned Additional Government Pleader prayed for final opportunity to get instructions as to the M-Sand said to have been transported in the vehicle, especially the fact whether it is really M-Sand or river sand and therefore, this Court has adjourned the matter to 30.11.2018 'for orders' and on that day also, once again time was sought on behalf of the respondent and therefore, this Court has posted the matter on 03.12.2018 as a last chance and on the request made by the learned counsel appearing for the petitioner, the matter was posted today 'for orders'.

5 Mr.V.Jayaprakash Narayanan, learned Government Pleader [In-charge] once prays for time to get instructions on the ground that the contraband seized from the said vehicle has been sent for analysis and the response is awaited and he would further add that deliberately the driver of the vehicle had deviated from the route and in the process, loaded the river sand for the purpose of transporting the same and that, the vehicle had not reached the destination on time and rightly, a case came to be registered. It is also the submission of the learned Government Pleader [In-charge], by drawing the attention of this Court, to the common order dated 29.10.2018 made in WP. [MD] Nos.19936/2017 and 7595/2018 [Muthu Vs. The District Collector, Pudukkottai and Others] and would submit that this Court, while disposing of the said writ petitions, has given the following directions and as such, any application for release of the vehicle shall be filed before the Special Court alone. It is relevant to extract the same:-

- i. The District Level Task Forces and Taluk Level Task Forces, constituted pursuant to the order passed in WP [MD] No.9806 of 2018 should follow the G.O.Ms.No.135, Industries [MMA.1] Department, dated 13.11.2009 in letter and spirit.
- ii. As stated in the above said Government Order, periodical meetings will have to be held which is inclusive of action taken / to be taken for the illicit mining.
- iii. Steps will have to be taken for dereliction of the duty by the concerned officials.
- iv. Taluk Level Task Forces shall also comply with the directions issued in the Government Order by making frequent surprise checks and submit their report to the District Level Task Forces.
- v. The Taluk Level Task Forces shall meet every fortnight as mandated in the Government Order.
- vi. The responsibility fixed in the Government

Order will have to be strictly construed and action will have to be taken against the erring Village Administrative Officer, Tahsildar, officer in-charge of the Department of Geology and Mining at District Level.

- vii. Action taken report will have to be sent by the District Collector concerned for the purpose of taking necessary action. The District Collector concerned shall take appropriate departmental action by himself as per the Rules provided so.
- viii. Separate records will have to be maintained by the Village Administrative Officer, Tahsildar and Officer in-charge of the Department of Geology and Mining with respect to the cases involving illicit mining.
- ix. As and when illicit mining is reported, the same will be recorded in the records.
- x. The respective District Collectors will have to ensure by making wide publicity of phone particulars assigned to the District Level Task Forces and the Taluk Level Task Forces, so that, the general public can give their complaints. There should be affixture or display of the phone particulars in the Collectorate, Taluk Office, Office of Deputy Director and Assistant Director of Geology and Mining and that of the Village Administrative Officer.
- xi. Complainant will have to be intimated on the action taken within a period of one week from the date of receipt of the complainant.
- xii. A complainant shall also be received even when made through phone calls.
- xiii. Complaints by an authorised person under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 are to be made immediately and not later than one week from the date of seizure.
- xiv. Whenever, a final report is filed for the offence under Section 379 IPC by the jurisdictional police before the jurisdictional Magistrate, the same shall also be committed to the Special Court.

This is for the reason that it would be appropriate to deal with both the police case and the private complaint by the same Court and in order to avoid any possible conflict.

xv. The revenue officials at the time of seizure can issue a memo to the person in-charge of the vehicle, mineral among other things, indicating the seizure made, along with the date and time.

xvi. In so far as the seized vehicles are concerned, they shall be produced before the concerned Magistrate Court by the revenue authorities at the time of filing their respective complaints.

xvii. Any application for release of vehicle etc., can only be filed before the Special Court alone.

xviii. Any violation of the above would constitute a contempt of the order passed by this Court, for which, appropriate application can either be filed before the First Bench of this Court or any other Bench as per the direction of the Hon'ble Chief Justice.''

6 The learned counsel for the petitioner would submit that except the fact that the driver went to his native place, he did not transport any river sand and what was transported in the vehicle is only M-Sand despatched by the manufacturer and also filed an additional affidavit of the owner M/s.New Bharat Blue Metal, viz., Thiru.M.Navaskan, dated 27.11.2018 and prays for release of the vehicle.

7 This Court has carefully considered the rival submissions and also perused the materials placed before it.

8 In the course of arguments, it is brought to the knowledge of this Court that Special Courts in the rank of District Judge to deal with the cases relating to sand, are yet to be constituted and the Government is also seeking clarification in that regard before the learned Single Judge. Admittedly, the contraband has been seized and kept separately and this Court is not inclined to go into the question whether the transported sand is M-Sand or river sand as it is for the Investigating Authority, viz., the respondent herein, to find out the truth by conducting investigation. A perusal of the documents filed in the typed set would prima facie indicate that license was accorded to M/s.New Bharat Blue Metal by the

Department of Geology and Mining, Government of Tamil Nadu vide Registration No.TN-TNV/8377/2017 dated 13.06.2018. A Transit Pass has also been given and it would also indicate that the sand should reach on or before 29.10.2018 and it is the stand of the respondent that admittedly the vehicle with the alleged M-Sand was intercepted on 30.10.2018.

9 Despite the fact that three opportunities have been granted to the respondent to come out with clear instructions, every time, time was sought on the ground that the Test Report is awaited. This Court has already pointed out that the contraband has been kept separately and it is not inclined to pass any orders as to the release of the same, unless the Lab/Test Report comes. The fact remains that the vehicle is in the custody of the respondent right from 30.10.2018 and in the facts and circumstances of the case and in the light of the reasons assigned above, this Court is of the considered view that the vehicle, viz., Multi Axle [Goods] Vehicle, bearing Registration No.TN-88-A-2319 [Chassis No.MAT466422E5N12650 ; Engine No:41K84187718], be released to the petitioner by way of interim custody subject to the following conditions:-

[a] The petitioner shall deposit a sum of Rs.50,000/- [Rupees Fifty Thousand only] without prejudice to his rights and contentions to the Deputy Director of Geology and Mining, Tirunelveli ;

[b] The petitioner shall also file an affidavit of Undertaking before the said Official that he will not alienate or further encumber the vehicle till the completion of the investigation in Cr.No.622/2018 ;

[c] The petitioner shall not, without obtaining orders from the jurisdictional Magistrate Court, viz., the Court of Judicial Magistrate No.1, Vridhachalam, alter the physical features of the vehicle.

10 On compliance of the above said conditions No.1 and 2, the respondent, viz., the Inspector of Police, shall order the release of the vehicle forthwith and on such release, it shall be produce before the Court of Judicial Magistrate No.1, Vridhachalam, once in two months, at 10.30 a.m., on the first working day, till the completion of the investigation.

11 It is also made clear that this writ petition came to be disposed of on the above terms on the facts and circumstances of the present case and it need not be cited as a precedent for any other case.

12 The writ petition stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

05/12/2018

For Being Mentioned

This matter having been listed on Thursday, the twelfth day of December 2019 for being mentioned, in pursuance of this order of this Court dt.05.12.2018, and made herein in the presence of Mr.S.Ayyathurai, Advocate for the petitioner and of Mr.V.Jayaprakash Narayanan, Government Advocate for the Respondent, this court made the following order:

Heard the submission of the learned counsel appearing for the petitioner and Mr.E.Manoharan, learned Additional Government Pleader appearing for the respondents.

2. This Court, in the order dated 05.12.2018 had observed that on compliance of the conditions in paragraphs nos.9(a) and 9(b), the sole respondent shall order release of the vehicle forthwith and it shall be produced before the Court of Judicial Magistrate No.1, Virudhachalam once in two months at 10.30 a.m on the first working day, till the completion of investigation and the main investigation appears to have been not yet completed.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the paragraph no.5 of the order and would submit that conditions has been scrupulously complied with and due to the pendency of investigation and other reasons, he found it extremely difficult to comply with the said conditions and would further add that as and when, the respondent requires the vehicle for inspection / verification, the petitioner will promptly produce the same.

4. In the light of the submission made coupled with the reasons assigned in the affidavit, paragraph no.10 of the order dated 05.12.2018 is modified as follows:

The petitioner is directed to produce the vehicle in question namely Multi Axle Goods Tata LPT Lorry bearing TN-88-A-2319 as and when required by the respondent. The rest of the conditions imposed in the order dated 05.12.2018 remains unaltered.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

AP

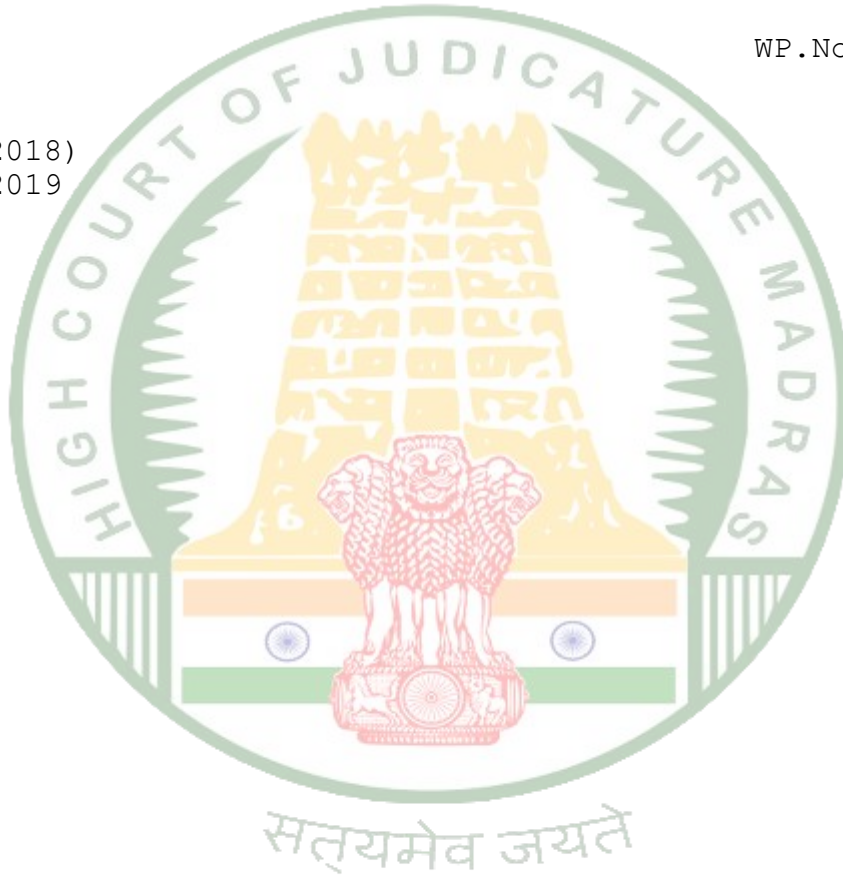
To

The Inspector of Police
Vridhachalam Police Station
Vridhachalam, Cuddalore District.

+lcc to Mr.S.Ayyathurai, Advocate, S.R.No. 83362
+lcc to the Government Pleader, S.R.No. 83703

WP.No.30292/2018

RK(CO)
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