

W.P.No.34656 of 2018
and
W.M.P.No.40183 of 2018

S. VAIDYANATHAN, J.
AND
P.T. ASHA, J.

(Order of the Court was made by S.VAIDYANATHAN,J.)

This Matter is listed today before us under the caption “for being mentioned” on the Orders of the Hon'ble Chief Justice dated 15.04.2019.

2. This Court, by an order dated 27.12.2018, had disposed of the above Writ Petition, by observing in Paragraph 4 of the Order that if any representation is filed by the Petitioner, the same shall be considered by the concerned Jurisdictional Magistrate and orders be passed thereon with regard to the release of the vehicle within a period of five days, on merits and in accordance with law.

3. For the sake of convenience, Paragraphs 3 and 4 are extracted hereinbelow:

“3.The petitioner seeks a direction to the respondents to release the petitioner's vehicle, which was seized on 04.12.2018 on the basis that the said vehicle was carrying one unit of sand illegally. It is also seen that an F.I.R. has already been registered against the

petitioner's vehicle and orders have also been issued for producing the vehicle before the concerned Jurisdictional Magistrate.

4. In keeping with the order of the Division Bench of this Court dated 29.10.2018 made in WP (MD) Nos.19936 of 2017 and 7595 of 2018, the petitioner shall move the concerned jurisdictional Magistrate for the release of the said vehicle by way of a fresh representation within five days from the date of receipt of a copy of this order. On receipt of the said representation, the concerned jurisdictional Magistrate shall consider the petitioner's representation and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of hearing to the petitioner as well as any of the interested parties, on or before 31.01.2019."

4. It is represented by the Petitioner that pursuant to the orders of this Court, a representation was made on 22.01.2019 to the learned Judicial Magistrate No.I, Jayankondam, seeking to release the vehicle and the learned Magistrate has passed an order on 31.01.2019 in Cr.M.P.No.224 of 2019, stating that any application regarding release of vehicle can be filed only before the Special Court in terms of the judgment of the Hon'ble Madurai Bench of Madras High Court dated 29.10.2018.

5. It is pertinent to mention here that in our order dated 27.12.2018, there was a specific direction to the Magistrate to consider and pass orders on the representation purely on merits and as per law and not to reject the

Application blindly at the threshold, after taking into account the orders passed by the Hon'ble Madurai Bench of Madras High Court in the case of **Gandhi vs. The Tahsildar, Thirverumbudur Taluk, Trichy and another,** reported in **CDJ 2018 MHC 6465** and **Muthu vs. The District Collector, Pudukkottai District and Others,** reported in **CDJ 2018 MHC 7179.**

6. It is true that as per the orders of the Hon'ble Madurai Bench of Madras High Court, reported in **CDJ 2018 MHC 7179** (cited supra) especially Paragraph No.13 (xvi), any application for release of vehicle etc., can only be filed before the Special Court. However, while hearing the matters in the case of **M.Chakravarthi vs. The Assistant Director, Thiruvallur District [W.P.Nos.34672 and 34553 of 2018]** decided on 27.12.2018 in Paragraph **No.5,** it was represented by the learned counsel on either side that no Special Court has been constituted so far and keeping in mind the said submissions, this Court had specifically directed the Petitioner herein to submit a representation before the concerned Jurisdictional Magistrate, seeking release of the vehicle in question. In the considered opinion of this Court, the learned Judicial Magistrate No.1, Jayankondam, instead of dismissing the application filed by the Petitioner for want of jurisdiction, ought to have taken the same

on file and passed orders on merits and in accordance with law in one way or the other, if he otherwise comes under the nomenclature “the concerned Magistrate” to deal with the case. The shallow attitude of the Magistrate is unacceptable and perhaps, such dismissal of the Petition by the Magistrate would have been on account of the reason that in the very same judgment of the Hon'ble Madurai Bench of Madras High Court, reported in CDJ 2018 MHC 7179 (cited supra), it was held as follows:

“(xvii) 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.”

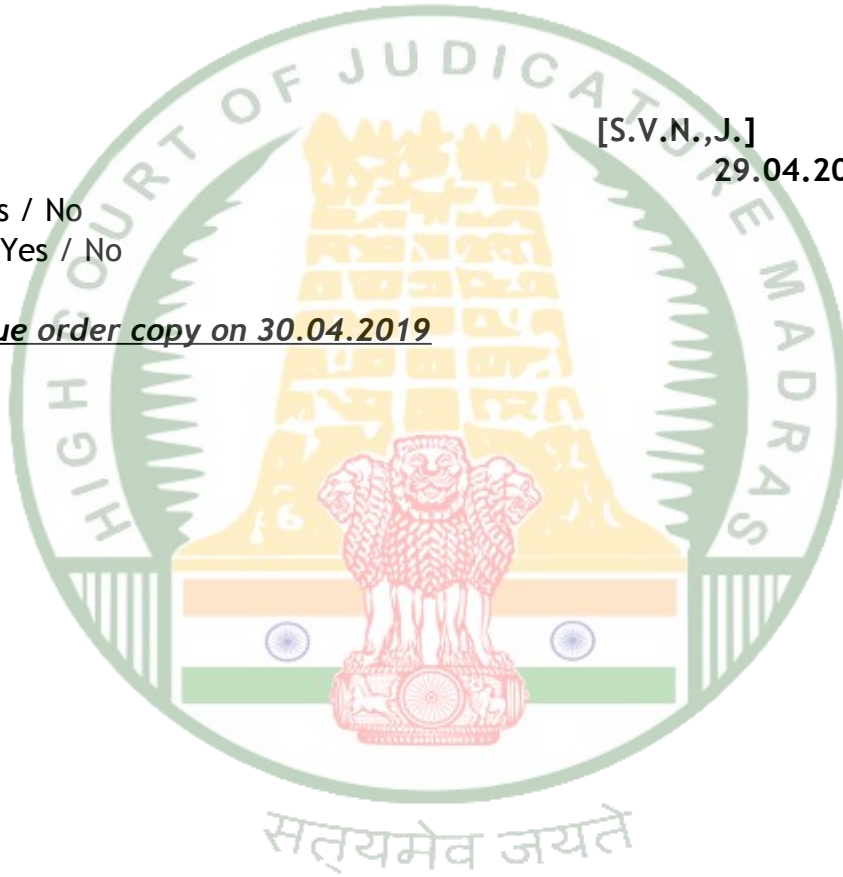
7. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. Hence, we hereby clarify that it is the concerned Jurisdictional Magistrate (not the Special Court), who has to take up matter and decide the issue with respect to release of the vehicle. The learned Judicial Magistrate No.1, Jayankondam is, at first, expected to determine and render a finding as to whether he is the concerned jurisdictional Magistrate or not and if so, then proceed further to pass orders

on the representation of the petitioner, bearing in mind the observations made hereinabove and also the earlier order dated 27.12.2018. If he is not the concerned Magistrate to decide the issue, he shall specify the name of the Magisterial Court and forward all the files to the said Court forthwith.

[S.V.N.,J.] [P.T.A.,J.]
29.04.2019

Index: Yes / No
Internet: Yes / No
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Note: Issue order copy on 30.04.2019



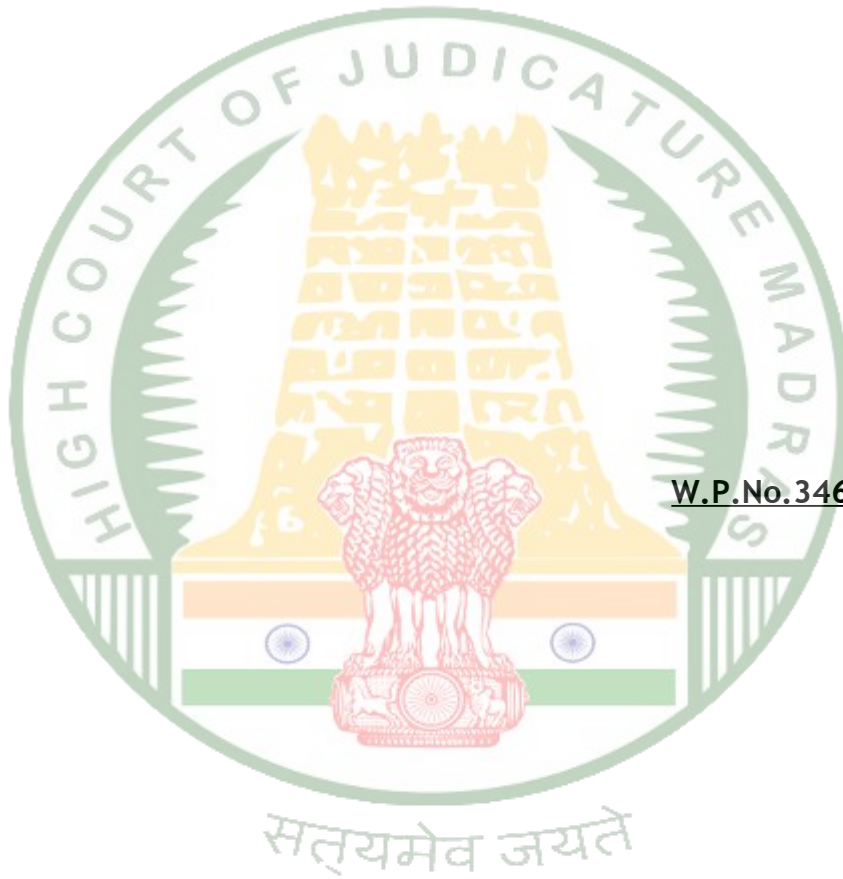
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S.VAIDYANATHAN, J.

AND

P.T. ASHA, J.

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W.P.No.34656 of 2018

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29.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.12.2018**

CORAM:

THE HONOURABLE MR.**JUSTICE S.VAIDYANATHAN**

AND

THE HONOURABLE MS.**JUSTICE P.T. ASHA**

W.P.No.34656 of 2018
and WMP No.40183 of 2018

Sathya

...Petitioner

Vs.

1. The Tahsildar,
Taluk Office,
Udayarpalayam Taluk,
Ariyalur District.

2. The Sub-Inspector of Police,
Vikkiramangalam Police Station,
Udayarpalayam Taluk,
Ariyalur District.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to release the petitioner's Ashok Leyland lorry bearing Regn.No.TN46 E 3817, seized on 04.12.2018 and kept under the custody of the 2nd respondent by an Order Na.Ka.A1/10222/2018 dated 18.12.2018.

For Petitioner : Mr.T.Ravichandran

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader (Incharge)

ORDER

(Order of the Court was delivered by **P.T. ASHA, J.**)

The writ petition is filed for issuance of a Writ of Mandamus, directing the respondents to release the petitioner's Ashok Leyland lorry bearing Registration No.TN46 E 3817, seized on 04.12.2018 and kept under the custody of the second respondent by an order dated 18.12.2018 in Na.Ka.A1/10222/2018.

2. We have heard Mr.T.Ravichandran, learned counsel appearing for the petitioner and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondents.

3.The petitioner seeks a direction to the respondents to release the petitioner's vehicle, which was seized on 04.12.2018 on the basis that the said vehicle was carrying one unit of sand illegally. It is also seen that an F.I.R. has already been registered against the petitioner's vehicle and orders have also been issued for producing the vehicle

before the concerned Jurisdictional Magistrate.

4. In keeping with the order of the Division Bench of this Court dated 29.10.2018 made in WP (MD) Nos.19936 of 2017 and 7595 of 2018, the petitioner shall move the concerned jurisdictional Magistrate for the release of the said vehicle by way of a fresh representation within five days from the date of receipt of a copy of this order. On receipt of the said representation, the concerned jurisdictional Magistrate shall consider the petitioner's representation and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of hearing to the petitioner as well as any of the interested parties, on or before 31.01.2019.

5. This writ petition stands disposed of on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

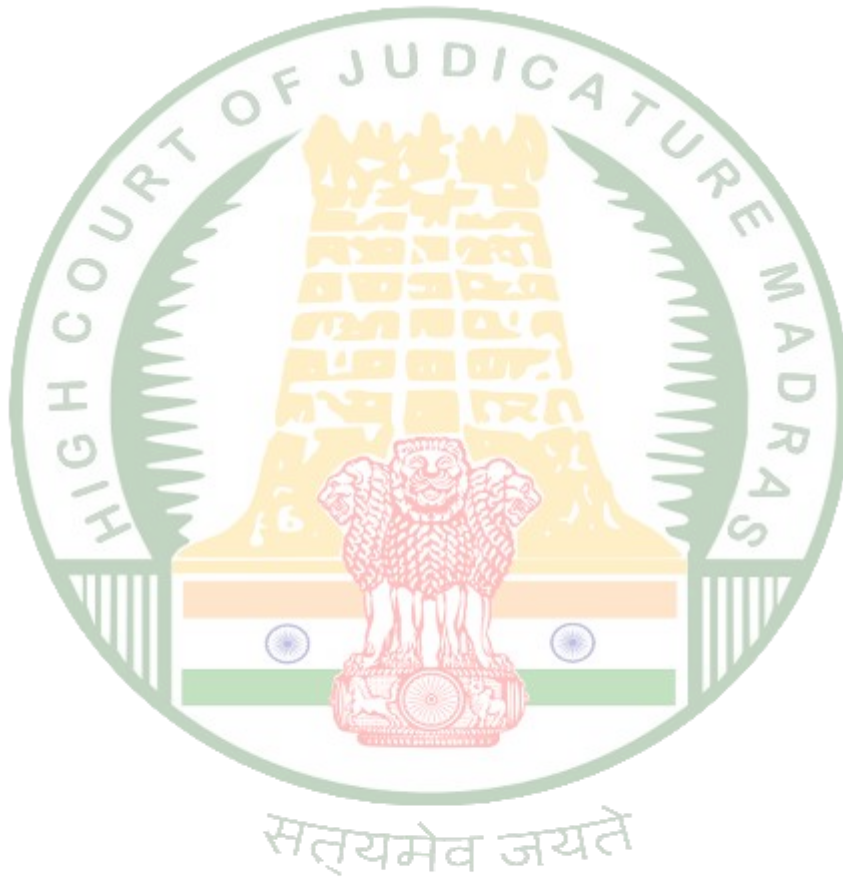
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[S.V.N.J.,] [P.T.A.J.,]

27.12.2018

Index: Yes/no
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speaking order/non speaking order

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S.VAIDYANATHAN, J.
and

P.T. ASHA , J.

(kj/jv)

1. The Tahsildar,
Taluk Office,
Udayapalayam Taluk,
Ariyalur District.
2. The Sub-Inspector of Police,
Vikkiramangalam Police Station,
Udayarpalayam Taluk,
Ariyalur District.



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27.12.2018