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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.587 of 2019

against

W.P. (MD) No.12177 of 2019

K.Ananthan

... Appellant/Petitioner

-vs-

1.The Sub Collector,
Sivagangai, Sivagangai District

2.The Assistant Director,
Mines and Minerals Department,
Sivagangai District.

3.The Inspector of Police,
Palathur Police Station,
Sivagangai District.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 15.05.2019, made in W.P.(MD) No.12177 of 2019, on the file of this Court.

Prayer in WP(MD)No. 12177/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS directing the respondents to release the vehicle bearing registration No.TN-28-W-9464.

For Appellant : Mr.V.Karuna

For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

J U D G M E N T

[Judgment of the Court was made by G.R.SWAMINATHAN, J.]

The appellant's vehicle was seized by the third respondent on 29.08.2018 for the alleged transportation of illegally mined sand. A case in Crime No.140 of 2018 was registered by the third respondent for the offence punishable under Section 379 I.P.C. and Section 21(4) of the Mines & Minerals (Development & Regulation), Act, 1957. The appellant filed Crl.M.P.No.214 of 2019, before the learned Judicial Magistrate, Karaikudi, seeking return of the vehicle. The learned Judicial Magistrate, by order dated



26.04.2019, dismissed the petition, on the ground that the Judicial Magistrate Court will not have the jurisdiction to entertain the application for return of the vehicle. Instead of formally challenging the said order, the appellant chose to file W.P.(MD (No.12177 of 2019 before this Court seeking for a direction to the respondents to release the vehicle. This Court, by order dated 15.05.2019, directed the respondents to release the vehicle on payment of a sum of Rs.1,50,000/-. Contending that this is an onerous condition imposed by the learned Single Judge, this writ appeal has been filed.

2. Heard the learned counsel on either side.

3. As rightly pointed out by the learned Special Government Pleader appearing for the respondents, when the vehicle was seized in connection with a criminal case and it has been handed over to the concerned Judicial Magistrate, it is the discretion of the concerned Judicial Magistrate to release the vehicle in question. The appellant ought not to have filed the writ petition instead of challenging the order of the learned Judicial Magistrate dismissing the application for return of vehicle.

4. Be that as it may, we permit the appellant to withdraw W.P.(MD(No.12177 of 2019 itself and we give him liberty to move the learned Judicial Magistrate, Karaikudi and file a fresh application for return of vehicle. We make it clear that the learned Judicial Magistrate, Karaikudi, will very much have the jurisdiction and authority to entertain the application for return of the vehicle. It is made clear that on such application being filed by the appellant, the learned Judicial Magistrate, Karaikudi shall take it on file and dispose the same on its own merits and in accordance with law. With this clarification, the writ appeal is disposed of. No costs.

Sd/-

Assistant Registrar (Crl.side)/
Vacation Officer

/ True Copy /

Sub Assistant Registrar(CS)

krk

To:

1.The Sub Collector,
Sivagangai, Sivagangai District.

2.The Assistant Director,
Mines and Minerals Department, Sivagangai District.

3.The Inspector of Police,
Palathur Police Station, Sivagangai District.

**Copy To:**

The Judicial Magistrate, Karaikudi.

+1 CC to M/s.V.KARUNA, Advocate (SR-66289[F] dated 29/05/2019)

+1 CC to M/s.SPL GP (SR-66493[F] dated 30/05/2019)

W.A. (MD) No.587 of 2019**29.05.2019**

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