

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.7044 of 2019

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the action of the 2nd respondent in sealing and attaching the petitioner's warehouse (godown) as illegal and arbitrary and consequently to set aside the same.

Heard Sri D.Prakash Reddy, learned Senior Counsel for the petitioner and learned Government Pleader for Home appearing for the respondents.

Learned Senior Counsel submits that the seizure itself is illegal and is not in accordance with Section 102 of Cr.P.C and basis for registration of crime is also illegal. He submits that in fact the petitioner is doing business as per the guidelines of the Central and State Governments, as such, the seizure itself is illegal. He further submits that the seizure is not informed to the concerned jurisdictional Magistrate as required under sub-section (3) of Section 102 of Cr.P.C, as such, the sealing and attachment of the petitioner's property is illegal.

On the other hand, learned Government Pleader for Home, basing on the counter affidavit, submits that the seizure has been reported to the concerned jurisdictional Magistrate and that the petitioner has efficacious alternate remedy under Section 451 of Cr.P.C. He further submits that disputed questions of facts are involved, which cannot be adjudicated in the writ petition, as such, this writ petition is liable to be

dismissed on this ground alone. In support of his contention, he relied on the judgment reported in **S.P. Forest Cell, Adyar v. Kannans Co.**¹, wherein and whereby the learned Single Judge allowed the writ petition by quashing the seizure and confirmed by Division Bench. However, the same was set aside by the Hon'ble Supreme Court, wherein it is held as follows:

“4. High Court committed error in adjudicating the question, whether the sandalwood was legally or illegally seized or was or was not in wrongful possession or whether the seized sandalwood is or is not subject matter of criminal cases. There did not exist any evidence on record to decide or conclude any such above findings. Aggrieved by this judgment of learned Single Judge, a writ appeal was preferred by the appellant which was also dismissed. Aggrieved by this present appeal is filed. As we have observed, the High Court committed error in going into the questions and recording findings which it should not have done in exercise of its power under [Article 226](#) of the Constitution of India. Not only High Court has decided disputed questions of fact but through its order has taken the property outside the reach of the Criminal Court. Accordingly, the said impugned orders are unsustainable in law. In fact the proper course open to the respondent was to move the criminal court under [Section 451](#) of Criminal Procedure Code in respect of the custody of the seized sandalwood. Admitted position is, the seized goods has been produced before the concerned criminal court, then for the custody of the same [Section 451](#) of the Criminal Procedure Code is the proper course. This Section empowers the criminal court to order for custody and disposal of property pending trial. Even if there be a dispute as in the present case whether the seized good is the property in the pending criminal case it is that criminal court alone would be competent to adjudicate and decide the issue but not the High Court under its writ jurisdiction. In view of this, we find the High Court has committed error in issuing the writ and granting the said relief to the respondent. Accordingly, the order of the learned Single Judge and the impugned judgment in writ appeal are hereby quashed. As the seized good is with respondent No. 1 he will produce the same before the Judicial Magistrate, Thiruvottiyur Chennai within three weeks from today.”

It is not the case of the petitioner that he has no alternative remedy. The only grievance of the petitioner is that since the seizure itself is illegal and not in consonance with the procedure envisaged under Cr.P.C, the writ petition is to be entertained. A reading of counter affidavit go to show that disputed questions of facts exist, which cannot be adjudicated in writ jurisdiction. However, the petitioner has alternate efficacious remedy before the concerned criminal Court, wherein he can raise all these objections before it, which will be in a position to analyze the factual aspects.

¹ (2001) 9 Supreme Court Cases 209

In view of the same, no relief can be granted. Accordingly, this Writ Petition is disposed of granting liberty to the petitioner to avail alternate remedy available to him under law. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

04-07-2019
kvs

A.RAJASHEKER REDDY,J



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