

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No. 14018 of 2020

Murugan

.. Petitioner

Vs

The State Rep. By
The Inspector of Police,
Arakandanallur Police Station,
Villupuram District.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the Special Court (Principal District Judge), Villupuram to number the CMP filed by the petitioner and to dispose of the case expeditiously within a time frame.

For Petitioner ... Mr.T.K.Saravanan

For Respondent .. Mr.R.Vijayakumar,
Addl. Govt. Pleader for R1

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner herein has come forward to file this writ petition seeking a direction to the Special Court (Principal District Judge), Villupuram to number the petition filed and dispose of the same within a reasonable time.

2. Heard the learned counsel appearing for the parties.

3.Learned counsel appearing for the petitioner submitted that the petition filed has been returned giving the following reasons, which is extracted below:-

"Return:

1)The police has registered this FIR under section

379 of I.P.C. And Sec.21 (1) of Mines and Minerals (Development & Regulation) Act 1957.

2)The police do not have any power to file complaint to take cognizance under Section 21(1) of Mines and Minerals (Development & Regulation) Act 1957. Since there is a bar u/s.22 of the Mines and Minerals Act, the procedure to be adopted is a private complaint by the Revenue Authorities before the Special Court.

3)Taking cognizance by Magistrate under Section 21 (1) of Mines and Minerals (Development & Regulation) Act 1957 is erroneous one. Since it is an erroneous order the Magistrate also rectify the same under section 460(e) of Cr.P.C.

4)Therefore, Sec.21(1) of Mines and Minerals (Development & Regulation) Act 1957 is not taken on file. Then only section 379 will survive. For section 379 of I.P.C. the petitioner can approach Judicial Magistrate for bail.

5)As per Sec.451 of Cr.P.C. when any property is produced before the Criminal Court i.e., here in this case before Judicial Magistrate. Hence, Judicial Magistrate alone having power to pass orders. Hence this petition is return and the petitioner may be file before proper Judicial Magistrate."

4.It is further submitted by the learned counsel appearing for the petitioner that the aforesaid reasons cannot be sustained in the eye of law especially in the light of the orders passed by this Court.

5. We do find considerable force in the submission made by the learned counsel appearing for the petitioner. Upon hearing the submissions made, this Court in W.P.Sr.No.49596 of 2020 by order dated 20.08.2020, held as follows:-

5. From the aforesaid orders passed, it has been made clear by the Division Bench in which one of us was a party [Justice M.M.SUNDRESH] to the effect that any application for release of the vehicle when an offence mentioned under The Mines and Minerals (Development and Regulation) Act, 1957 or the Rules framed thereunder is indicated, the remedy open to the party is to approach the designated Court. Applying the same logic, even in a case where an FIR has been registered on the basis of a private complaint and when the allegation indicates an offence

punishable under The Mines and Minerals (Development and Regulations) Act, 1957 or the Rules framed any request for release of vehicle will have to be made before the designated Court alone. This is for the reason that the allegation would constitute an offence under the Mines and Minerals (Development and Regulation) Act and the Rules framed thereunder and therefore notwithstanding the non mentioning of the violation committed under the provisions of Indian Penal Code, it is only the designated Court which will have jurisdiction.

6. In the judgement referred above, the Division Bench has clearly indicated the difference between the seizure and confiscation particularly, in the light of the provisions governed under the enactment. Therefore the power of release is only available to the designated court. This is for the reason that confiscation involves a process and a release is not a matter of course being one of the option open to the court by considering the facts governing. If that is the position, this court cannot interdict the same without going into the role assigned to the designated Court and without taking note of the relevant provisions governing.

7. Before the learned single Judge, unfortunately, the order of the Division Bench has not been brought to the notice. Perhaps, that is the reason why the scope and ambit of the provisions concerned available with The Mines and Minerals (Development and Regulation) Act, 1957 has not been taken note of. As stated, the Division Bench has clearly mentioned in one of its directions that the only remedy open to a person seeking release of vehicle, which is allegedly involved in an offence attracted under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules is before the designated Court. In such view of the matter the objection raised by the Registry stands upheld.

8. There is a thought process which was gone into at the time of passing the order by the Division Bench. One of the reasons is that a designated Court is expected to apply its mind on the merits and facts of the case before exercising its power either for confiscation or release as the case may be. We have already held that even the revenue authority does not

have the power to release the vehicle on compounding. Once such a power is not available, power under Article 226 of The Constitution of India being discretionary and directory also cannot be invoked in a given case where the vehicle is also with the custody of the police. The designated Court can exercise the power of release or confiscation irrespective of the fact that the vehicle is with the police or with the judicial custody. This will also solve the problem of delay that may occur.

9. Now, we have been informed that the designated Court is functioning. Therefore the petitioner can very well approach the designated Court. As and when the petitioner files an application for release of vehicle, we expect the designated Court to consider the peculiar facts of the case including the fact that the vehicle has already been in the custody of the police for several months and therefore it caused financial loss. We expect the designated Court to dispose of the application to be filed within a period of one week from the date of filing of such application by taking into consideration the aforesaid observation made. Since we hold that the writ petition is not to be entertained, the endeavour made by the learned counsel for the petitioner on merit is not gone into. Though we may otherwise inclined to go into the same. Thus, it is left open to the petitioner to raise it before the designated Court. This unnumbered writ petition is directed to be returned accordingly. Consequently, we direct the Registry not to entertain any such request in future.

6. In such view of the matter, the petitioner is directed to represent the papers within a period of two days from the date of receipt of a copy of this order. After the said exercise is done, the designated Special Court is expected to number the same and pass appropriate orders within a period of one week thereafter.

7. The writ petition stands disposed of accordingly. No costs.

Sd/--

Assistant Registrar

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Sub Assistant Registrar

mmi/ssm

To

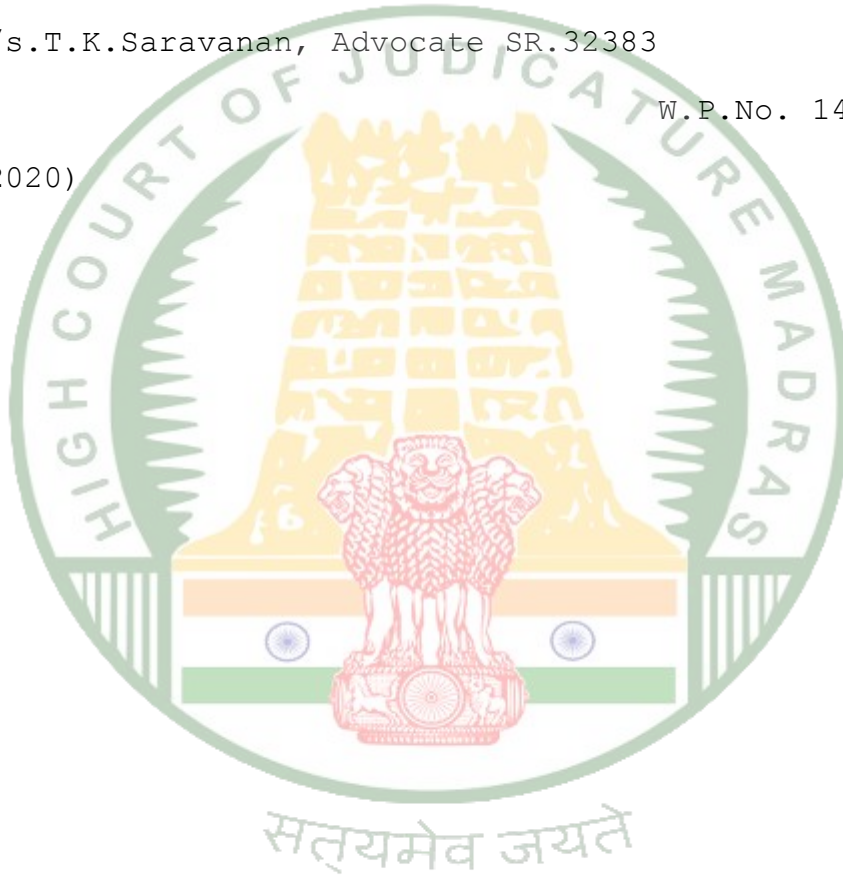
1.The Special Court
(Principal District Judge),
Villupuram.

2.The Inspector of Police,
Arakandanallur Police Station,
Villupuram District.

+lcc to M/s.T.K.Saravanan, Advocate SR.32383

W.P.No. 14018 of 2020

SAI (CO)
CB(07/10/2020)



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