



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

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W.P(MD)No.8209 of 2020

Ishthiyah, S/o.Moideen Abdul Kadar

...Petitioner

Vs.

1.The Superintendent of Police,
O/o. the Superintendent of Police,
Ilathur Road,
Kuthukkalvalasai,
Tenkasi.

2.The Inspector of Police,
Alangulam Police Station,
Tirunelveli District.

3.The Assistant Director of Income Tax (Investigation),
O/o. the Assistant Director of Income Tax (Investigation),
Income Tax Office,
Tirunelveli.

...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 return the petitioner's money a sum of Rs.34,71,300/- [Rupees Thirty Four Lakhs Seventy One Thousand and Three Hundred only], which was seized in Crime No.328 of 2020, on the file of the second respondent police station, by considering the representation of the petitioner, dated 20.07.2020.

For Petitioner : Mr.S.M.A.Jinnah

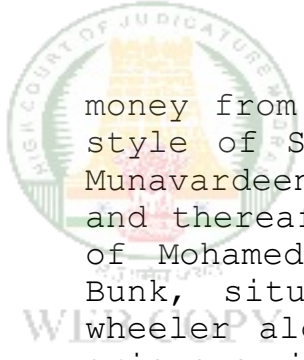
For R1 and R2 : Mr.S.Chandrasekar

Additional Public Prosecutor

ORDER

This Writ Petition has been filed praying for issuance of a Writ of Mandamus, directing the respondents to return a sum of Rs.34,71,300/- to the petitioner, which was seized in Crime No.328 of 2020, on the file of the second respondent police, by considering the petitioner's representation dated 20.07.2020.

2.The case of the petitioner is that he is running a shop in the name and style of Fiya Home Appliances and selling Mobile Phones, Television, Air Conditioner and Mobile Phones Spare Parts. On 15.07.2020, one Mohamed Sheik Munavardeen, who is working as a Staff in the said Mobile Shop, was sent by the petitioner to collect



money from one Peter, who is running a mobile shop in the name and style of S.S. Mobiles at Pavoorchathiram. The said Mohamed Sheik Munavardeen has collected a sum of Rs.1,70,000/- from the said Peter and thereafter, he has received Rs.33,00,000/- from one Faisal, son of Mohamed Abdul Razak. While he was nearing Pathrakali Petrol Bunk, situated at Tenkasi to Tirunelveli Main Road, in his two wheeler along with his friend, met with an accident and sustained grievous injuries. Immediately, after the accident, the Police Personnel attached to the second respondent Police Station came there and without conducting proper enquiry, registered a case in Crime No.328 of 2020 for the offence under Section 41(2) Cr.P.C. and recovered a total sum of Rs.34,71,300/- from the petitioner's staff and remitted the same before the Treasury at Tirunelveli. Further, the second respondent gave an information to the third respondent about the said money and they have also enquired about the money from the petitioner's staff on 16.07.2020.

3.Further, according to the petitioner, after registering the case, the second respondent has not conducted any enquiry in respect of ownership of money, which was recovered from his staff. In this regard, the petitioner gave a representation dated 20.07.2020, narrating the entire incident. But, no action has been taken so far on the said representation. Hence, the present Writ Petition.

4.The learned Additional Public Prosecutor appearing for the respondents 1 and 2, on instructions, would submit that after remitting a sum of Rs.34,71,300/- in the Treasury at Tirunelveli, the same has been handed over to the third respondent for further course of action. According to the learned Additional Public Prosecutor, now, the third respondent is the competent person to consider the representation of the petitioner, dated 20.07.2020.

5.Upon considering the arguments advanced by the learned counsel on either side, this Court is of the view that if the contention raised by the petitioner is true one, it is for him to show his *bona fide* before the Officer concerned and prove the ownership in respect of the amount recovered from his Staff by the second respondent police. Further, considering the fact that the recovered amount now is in the hands of the third respondent, who is the competent person to consider the representation of the petitioner, this Court directs the third respondent to consider the representation given by the petitioner, dated 20.07.2020 and pass appropriate orders on the same on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.



6.This Writ Petition is disposed of with the above direction.
No costs.

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// True Copy //

Sd/-

Assistant Registrar (ADII)

/ /2020

Sub Assistant Registrar(CS)

smn2

Note :- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Superintendent of Police,
O/o. the Superintendent of Police,
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Kuthukkalvalasai,
Tenkasi.
- 2.The Inspector of Police,
Alangulam Police Station,
Tirunelveli District.
- 3.The Assistant Director of Income Tax (Investigation),
O/o. the Assistant Director of Income Tax (Investigation),
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KB(20.08.2020) 3P 4C