



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.12072 of 2020

Manthira Moorthy

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Tuticorin,
Tuticorin District.

2.The Assistant Director,
Department of Geology and Mines,
Tuticorin District.

3.The Inspector of Police,
Tattarmadam Police Station,
Thoothukudi District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to release the petitioner's vehicle Hitachi (Hyundai) vide Service No.R210V N634D00072.

For Petitioner : Mrs.K.M.Priscila Jancy
For Respondents : Mr.M.Rajarajan,
Additional Government Pleader.

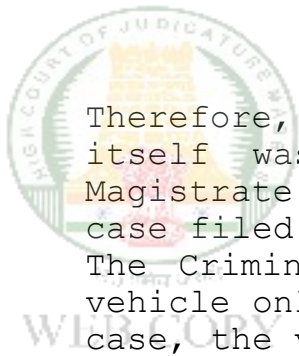
O R D E R

Heard the learned counsel on either side. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petition mentioned vehicle was seized in connection with the alleged illegal excavation of sand.

3. The learned Additional Government Pleader appearing for the respondents points out that there is an impediment in this case. The petitioner had earlier filed Crl.R.C.(MD)No.456 of 2020, seeking release of the vehicle and vide order dated 21.08.2020, the petitioner had been directed to deposit a sum of Rs.5,00,000/-. In view of the said order, the writ petition may not even be maintainable.

4. The objection raised by the learned Additional Government Pleader is formidable. I posed a question to the learned Additional Government Pleader as to whether the vehicle had been produced before the jurisdictional Criminal Court or not. The answer is that the vehicle is yet to be produced before the jurisdictional Court.



Therefore, the petition filed before the learned Judicial Magistrate itself was not maintainable. In fact, the learned Judicial Magistrate rightly dismissed the petition. In fact, the revision case filed by the petitioner itself was inherently not maintainable. The Criminal Court will have the power to direct release of the vehicle only if the vehicle is in the custody of the Court. In this case, the vehicle is not in the custody of the Court. Therefore, it is only the Writ Court will have the power to direct release of the vehicle.

5. Having held that this writ petition is maintainable, the question is whether the petitioner is entitled to the relief sought for.

6. I am of the view that keeping the petition mentioned vehicle in the custody of the respondents is not going to serve any purpose. The Hon'ble Supreme Court in the decision reported in (2002) 10 SCC 283 (Sunderbhai Ambalal Desai and Others V. State of Gujarat) has held as follows:-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

7. It is not in dispute that in scores of similarly placed cases involving seizure of earth movers, this Court had granted relief by directing them to pay a sum of Rs.50,000/- as costs. I think the very same approach can be adopted in the case on hand also.

8. The learned counsel for the petitioner on instructions gives an undertaking that the petitioner will spend a sum of Rs.50,000/- (Rupees Fifty Thousand Only) for the welfare related activities of the third respondent police station. He gives a further undertaking that the petitioner will see to it that the vehicle is not involved in any other offences of similar nature. The vehicle will be produced before the authority or the Court concerned as and when required. The learned counsel appearing for the petitioner states that the vehicle will not be alienated. The petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed. The petitioner shall produce all the documents pertaining to the ownership of the seized vehicle.

9. The submission of the learned counsel for the petitioner is placed on record. If the undertakings given before this Court are breached, the benefit of this order will stand recalled and the



vehicle in question will be taken back to custody and it will be released only after getting orders from this Court on such terms as this Court may deem it fit to impose.

10. Therefore, the respondents are directed to release the vehicle in question forthwith and without any delay.

11. The Writ Petition is allowed accordingly. There shall be no order as to costs.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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 Revenue Divisional Officer,
Tuticorin,
Tuticorin District.
- 2.The Assistant Director,
Department of Geology and Mines,
Tuticorin District.
- 3.The Inspector of Police,
Tattarmadam Police Station,
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+1 CC to M/s.GP (SR-17559[F] dated 21/09/2020)

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