

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12528 of 2021

Chinnappa

...Petitioner

Vs.

1.The District Revenue Officer,
O/o. The District Collector,
Coimbatore District.

2.The Inspector of Police,
CSCID,
Coimbatore,
Coimbatore District.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus to direct the respondents to release the petitioner's Ashok Leyland Dost bearing Registration No.TN-38-CW-8184 which was seized by the second respondent on 21.04.2021 by considering the petitioner's representation dated 23.04.2021.

For Petitioner : Mr.R.Rajadurai
for Mr.M.Vinoth

For Respondent : Mr.S.John J.Raja Singh
Government Advocate

ORDER

The writ on hand is filed to direct the respondents to release the petitioner's Ashok Leyland Dost Lorry bearing Registration No.CW8184 which was seized by the second respondent, the Inspector of Police on 21.04.2021 by considering the representation dated 23.04.2021.

2. A lorry seized regarding commission of an alleged offence in a criminal case cannot be released by submitting a representation to the authorities and by filing a writ petition, seeking prayer to consider the said representation under Article 226 of the Constitution of India. The practice of releasing lorries by submitting a representation to the police officials cannot be construed as a legal procedure, more specifically, in a pending criminal case. However, such writ petitions are filed in a routine manner by simply sending a representation to the Police investigating authorities and by filing a writ petition, seeking prayer to consider such representation. The practice will lead to corrupt activities and High Court can never encourage or pave way for such corrupt practices amongst the litigants and the public authorities. Undoubtedly, the competent authorities are thriving hard to control the offences relating to essential commodities across the State of Tamil

Nadu. Such offences now became a routine affair in the State and serious steps are to be taken to control such offences relating to essential commodities as the same would affect the right of poor citizen of this great Nation from availing the free essential commodities through fair price shops and other Government institutions. In the event of issuing a routine direction to consider the representation for releasing of lorry, which was seized for commission of an alleged offences in a pending criminal case, the same would provide an unnecessary scope and encouragement for the offenders as they are repeating the crime by utilizing the same lorry, which is being released in a routine manner by merely submitting a representation to the investigating authorities.

3. Thus, the law in force and the procedures to be followed in this regard for disposal of property are necessarily to be considered in the present writ petition.

4. The facts in nutshell are that the petitioner is the owner of Ashok Leyland Dost bearing Registration No.TN38 CW 8184 and using the vehicle for lawful purposes. The lorry belongs to the petitioner was

seized by the second respondent / the Inspector of police and now with the custody of the second respondent. The petitioner states that he was using the vehicle for carrying vegetables from the market and earning from the business to meet out his livelihood. On 21.04.2021, the second respondent was checking the vehicle and seized the vehicle carrying load of 40kgs X 30 bags = 1,200 Kgs of PDS rice. A criminal case was registered in Crime No. 85 of 2021 for the offences under Section 6(4) of TNSC (RDCS) Order 1982 read with Section 7 (1)(a)(ii) of the Essential Commodities Act, 1955. Vehicle is now under the custody of the second respondent. The petitioner submitted a representation in person on 23.04.2021. to release the vehicle and the said representation is not considered. Thus, the petitioner is constrained to move the present writ petition.

5.Learned counsel for the petitioner states that in similar cases, this Court issued direction to release the vehicle on certain terms and conditions and therefore, the same order is to be passed.

6.Learned counsel appearing on behalf of the respondents seriously objected the grounds raised in the writ petition by stating

that no order is passed under the provisions of the Essential Commodities Act and therefore, the writ petition is not entertainable. Only if an order is passed under Section 3 of the Essential Commodities Act, then alone Section 6(E) could be operated for bar of jurisdiction. In the present case, the lorry was seized during routine check up by the police and a criminal case was registered and therefore, the petitioner has to approach the competent Court under the provisions of the Criminal Procedure Code for the purpose of seeking the relief.

7.Let us now consider the provisions of the Essential Commodities Act. Section 2(A) stipulate essential commodities declaration, etc., and Section 3 provides power to control production supply, distribution, etc. of the essential commodities.

8.Section 6(E) of the Essential Commodities Act contemplates bar of jurisdiction in certain cases, which reads as under:

"Whenever any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, or any package covering or receptacle in which such essential commodity is found, or any animal,

vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under Section 6-A, the Collector, or as the case may be, the judicial authority appointed under Section 6-C shall have and notwithstanding anything to the contrary contained in any other law for the time being in force, any other Court, Tribunal or authority shall not have jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle animal, vehicle, vessel or other conveyance.”

9. Careful reading of the above provision would reveal that bar of jurisdiction is applicable only in certain cases and therefore, it is neither absolute nor applies in all the cases. Thus, the application of bar of jurisdiction with reference to certain cases indicated in the provisions alone is to be taken note of. The provision is unambiguous. Whenever an essential commodity is seized in pursuance of an order made under Section 3 of the Act is in relation thereto, or any package covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under Section 6-A, the Collector, or as the case may be, the judicial authority appointed

under Section 6-C shall have and notwithstanding anything to the contrary contained in any other law for the time being in force, any other Court, Tribunal or authority shall not have jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle animal, vehicle, vessel or other conveyance.

10. Thus, only in cases, where an action is initiated by the competent authority by invoking the provisions of the Essential Commodities Act, more specifically, an order is passed under Section 3 of the Essential Commodities Act, then alone, Section 6(E) for bar of jurisdiction can be applied and not in other cases. In respect of the case on hand, the lorry was seized, while the commission of an alleged offence by the police authorities and a criminal case was registered and the materials were seized. Thus, the lorry was seized on account of registration of a criminal case and therefore, the bar of jurisdiction contemplated under Section 6(E) of the Essential Commodities Act is not applicable and for disposal of property in a criminal case, the procedures contemplated under the Code of Criminal Procedure is to be followed.

11.Registration of a criminal case for commission of certain alleged offences under the statute by the police authorities cannot be connected with the actions to be taken by the competent authorities under the Essential Commodities Act. In the present case, the competent authorities have not passed any orders under Section 3 of the Essential Commodities Act. Therefore, submission of a representation to the Inspector of Police itself is not entertainable as the Inspector of Police cannot deal with an application for disposal of property under the Code of Criminal Procedure.

12.In the case on hand, the criminal case was registered in Crime No.85/2021 and the competent authorities under the provisions of the Essential Commodities Act has not passed any orders by invoking Section 3 of the said Act. The criminal case was registered by the Police authorities under Section 154 of the Code of Criminal Procedure with reference to cognizable cases. Thus, an aggrieved person in this regard is bound to approach the competent Criminal Court of law, more specifically, under Chapter XXXIV of the Code of Criminal Procedure Code. Chapter XXXIV enumerates disposal of

property. Section 451 deals with an order for custody and disposal of property pending trial in certain cases. Section 457 denotes the procedure by police upon seizure of property. Therefore, in order to redress the grievances, the person aggrieved, has to approach the competent court of law under the code of Criminal Procedure and a writ petition is neither entertainable nor a relief can be granted to consider the representation submitted before the Police authorities.

13. In a criminal case registered by the Police authorities, and after investigation and filing of charge sheet, the properties seized, which all are material objects, are to be produced for conducting a trial and therefore, those material objects and the properties seized in a criminal case cannot be dealt with by the High Court in a writ petition under Article 226 of the Constitution of India, more specifically, for release of a seized vehicle in a criminal case.

14. The practice of sending a representation to the Police authorities and immediately filing a writ petition with a prayer to consider the representation for release of vehicle, if entertained by the High Court, then it would definitely cause prejudice to the public

interest and further, in violation of the procedures as contemplated under the code of Criminal Procedure. As far as the provisions of the Essential Commodities Act is concerned, the bar of jurisdiction in certain cases contemplated under Section 6(E) could be applied in certain cases with reference to the ingredients stipulated in Section 6(E) of the Essential Commodities Act. Under the said provision, there is no total or absolute bar of jurisdiction for the Criminal Court of law to entertain application in a criminal case registered by the police authorities under Section 154 of the Code of Criminal Procedure. In the present case, the authorities competent under the provisions of the Essential Commodities Act, has not passed any order under Section 3 of the Act and therefore, absolutely there is no bar for approaching the Criminal Court of law for seeking appropriate relief.

15. Beyond all these facts and circumstances, High Court cannot conduct a Roving enquiry with reference to the alleged commission of offences with reference to a criminal case in a writ proceedings under Article 226 of the Constitution of India. Once an F.I.R is registered regarding the alleged commission of offences, certain material objects were seized including vehicle, then disposal of the said properties are

to be dealt in accordance with the provisions of the Code of Criminal Procedure and therefore, the High Court in a writ proceedings, cannot conduct an enquiry nor issue a direction to consider the representation, which would hamper investigations to be conducted in a criminal case by the investigating agencies.

16. Even in cases, where actions are initiated under the provisions of the Essential Commodities Act, Section 6-C of the said Act provides an appeal to the aggrieved persons for redressal. Thus, the aggrieved person is at liberty to approach the competent authority under the Essential Commodities Act, if any actions are initiated under the provisions of the said Act. However, if a criminal case is registered by the jurisdictional police authorities, then the disposal of the properties are to be done by following the procedures as contemplated under the Code of Criminal Procedure and a writ proceedings under Article 226 of the Constitution of India is not entertainable. As no action or order has been passed under the Essential Commodities Act, there is no bar of jurisdiction for the purpose of approaching the competent Criminal Court of law under the Code of Criminal Procedure.

S.M.SUBRAMANIAM, J.

VRI/Rpl

17.Thus, the petitioner is at liberty to approach the competent forum for the purpose of redressal of his grievances in the manner known to law. Consequently, the relief as such sought for in the present writ petition is not entertainable and cannot be considered.

18. Accordingly, the writ petition fails and stands dismissed. No costs.

10.06.2021

Speaking/Non Speaking
Internet:Yes/No
vri/rpl/kak
To

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