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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.02.2021
Pronounced On	27.05.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 15438 of 2017

and

W.M.P. Nos. 16724 to 16726 of 2017

T.P.Ganesan,

S/o.Paramasivam

... Petitioner

Vs

1.The Presiding Officer,
The II Additional District Court,
Salem, Salem District.

2.The District Forest Officer,
Salem, Salem District.

3.The Inspector of Police,
Tharamangalam Police Station,
Salem District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed in CrI.A.No.137 of 2015 dated 24.03.2017 on the file of the II Additional District and Sessions Judge, Salem confirming the order passed by the 2nd respondent in Ka.No.1907/2014 Ku dated 07.09.2015 quash the same and direct the 1st respondent to release the vehicle Maruti Suzuki Swift Car bearing No.TN-30-AW-8888 and Chevrolet Tavera Car bearing No.TN-30-P-6539 of the petitioner.

For Petitioner : Mr.S.Doraisamy
for Mr.V.Elangaovan

For Respondents :
For R2 : Mr.S.Prabhu
Additional Government Pleader

For R3 : Mr.N.Inbanathan
Additional Government Pleader



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ORDER

The petitioner has challenged the impugned order primarily on the ground that the 2nd respondent has passed an order dated 07.09.2015 without following the principle of natural justice.

2. It is the case of the petitioner that the 2nd respondent passed the impugned order dated 07.09.2015 and ordered confiscation of the petitioner's vehicles viz., Maruti Suzuki Swift Car bearing Reg. No.TN-30-AW-8888 and Chevrolet Tavera Car bearing Reg.No.TN-30-P-6539. Against which, the petitioner filed an appeal in Crl.A.No.137 of 2015 before the 1st respondent. It is submitted that the said appeal was wrongly dismissed on 24.03.2017 by the 1st respondent. Hence, the petitioner has come forward with the present writ petition.

3. The brief facts of the case are as follows:-

(i) The petitioner is the owner of the vehicles viz., Maruti Suzuki Swift Car bearing Reg.No.TN-30-AW-8888 and Chevrolet Tavera Car bearing Reg.No.TN-30-P-6539.

(ii) A complaint in Cr.No.256 of 2013 under Sections 294(b), 506(ii) of IPC read with Sections 35, 36(a) (e) of the Tamil Nadu Forest Act, 1882 was filed.

(iii) The 2nd respondent seized the said vehicles of the petitioner which allegedly used for carrying scheduled timber without proper permit.

(iv) A Show Cause Notice was issued by the 2nd respondent dated 20.06.2014 that why the vehicles should not be confiscated to the Government.

(v) The petitioner replied on 04.07.2014 denying the commission of any offence an involvement of his vehicles in the transport of the timber without permit.

4. The learned counsel for the petitioner submits that the vehicles were seized on 01.07.2013 and the same were ordered to be released by the learned Special Judge for E.C.Cases, Salem vide order in C.M.P.No.153 of 2014 dated 03.10.2013 in Cr.No.256 of 2015.

5. The learned counsel for the petitioner relied on the following three decisions:-

(i) Assistant Forest Conservator & Others Vs Sharad Ramchandra Kala, AIR 1998 SC 2927.

(ii) 1992 CRL L.J 3057

(iii) Dilip Kumar Mahapatra Vs Smt.Bela Mahapatra & Others, AIR 1991 SC 381.



6. Defending the impugned order, the learned counsel for the 2nd respondent/District Forest Officer(Forest Department) submits that the so called order procured by the petitioner from the Judicial Magistrate's Court was not binding on the Forest Officers inasmuch as there is an express bar under Section 49G of the Tamil Nadu Forest Act, 1882 for a Magistrate to entertain application.

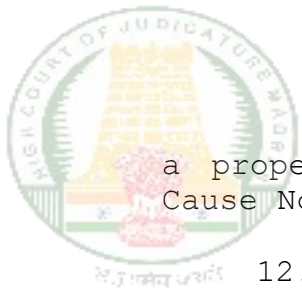
7. It is further submitted that under Section 49B(2) of the Said Act, it was for the petitioner to give a proper reply to prove his innocence by satisfying the authorized officer that the vehicles were used for carrying the scheduled timber without knowledge of the petitioner or his agent, if any, or the person in-charge of the vehicle while committing the offence and that they had taken all reasonable precaution. Instead of giving reply, the petitioner has threatened the respondents for Contempt of Court for not releasing the vehicle.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the 2nd and 3rd respondents.

9. The petitioner's vehicles i.e., Maruti Suzuki Swift Car bearing Reg.No.TN-30-AW-8888 and Chevrolet Tavera Car bearing Reg. No.TN-30-P-6539 were seized on 01.07.2013. At the time of seizure, the Inspector of Police, Tharamangalam recovered the contraband sandal wood, rosewood and implements from the said vehicles.

10. Thereafter, the petitioner was issued with a Show Cause Notice dated 20.06.2014 to which, the petitioner has given a half-hearted reply dated 04.07.2014. In his reply, the petitioner has merely threatened the 2nd respondent/District Forest Officer by stating that since the 2nd respondent had failed to comply with the order passed in C.M.P.No.153 of 2014 in Cr.No.256 of 2013, the 2nd respondent/District Forest Officer would be guilty of Contempt of Court. However, a copy of the said order is not available.

11. It was mandatory on the part of the petitioner to establish that the seized vehicles either were not used for carrying schedule timber or were used without knowledge or connivance of the petitioner and/or his agent and that the petitioner had taken a reasonable steps as is contemplated under Section 49B of the Tamil Nadu Forest Act, 1882. The petitioner has not participated in the proceedings initiated vide Show Cause Notice dated 20.06.2014 before the 2nd respondent by filing



a proper reply and by giving proper explanation to the Show Cause Notice.

12. Therefore, I do not find any merits in the present writ petition filed by the petitioner. However, this Court is inclined to give a fresh opportunity to the petitioner to file a proper reply to the Show Cause Notice dated 20.06.2014 within a period of thirty days from the date of receipt of a copy of this order. On such reply is being filed by the petitioner, the 2nd respondent/District Forest Officer shall pass appropriate order on merits and in accordance with law, within a period of three months from the date of reply affidavit filed by the petitioner. In case, the petitioner fails to avail of such opportunity, the liability continued in the impugned order shall stand continued without any fresh order.

13. The Writ Petition stands disposed of with the above observation. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Presiding Officer,
The II Additional District Court,
Salem, Salem District.
- 2.The District Forest Officer,
Salem, Salem District.
- 3.The Inspector of Police,
Tharamangalam Police Station,
Salem District.

+1cc to Special Government Pleader(F), S.R.No.27308

W.P. No. 15438 of 2017

GMI (CO)
CB(14/07/2021)