



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2022

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**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P. (MD) .No.4215 of 2022  
and  
W.M.P. (MD) .No.3607 of 2022

K.Raja

... Petitioner

Vs.

1.The District Forest Officer,  
Madurai.

2.The Forester,  
Usilampatti,  
Madurai District,  
WLOR No.4/2021.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in his proceedings in Na.Ka.No.154/2022/E1, dated 05.01.2022 and quash the same as illegal and consequently liberty may be granted to approach the learned Judicial Magistrate under Section 451 of Cr.P.C for getting the vehicle bearing registration number TN 63 AP 0704 pending trial in WLOR No.4/2021 on the file of the second respondent.

|                 |                                             |
|-----------------|---------------------------------------------|
| For Petitioner  | : Mr.T.A.Ebenezer                           |
| For Respondents | : Mr.P.Thilak Kumar,<br>Government Pleader. |

**ORDER**

This writ petition has been filed for a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in his proceedings in Na.Ka.No.154/2022/E1, dated 05.01.2022 and quash the same as illegal and consequently liberty may be granted to approach the learned Judicial Magistrate under Section 451 of Cr.P.C for getting the vehicle bearing registration number TN 63 AP 0704 pending trial in WLOR No.4/2021 on the file of the second respondent.

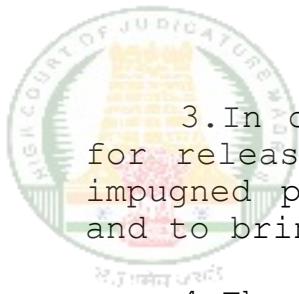


2.This impugned show cause proceedings shall be kept in abeyance for a period of four (4) weeks from today. The petitioner is given liberty to approach the Magistrate for release of the vehicle under Section 451 of the Criminal Procedure Code as made applicable to the provisions of the Wildlife Protection Act, 1972. The Magistrate concerned is required to consider the decision of the Hon'ble Supreme Court in ***State of Madhya Pradesh and others Vs. Madhukar Rao, (2008) 14 SCC, page 624*** and pass order. The relevant portion of the order reads as under:

"16.We are unable to accept the submissions. To contend that the use of a vehicle in the commission of an offence under the Act, without anything else would bar its interim release appears to us to be quite unreasonable. There may be a case where a vehicle was undeniably used for commission of an offence under the Act but the vehicle's owner is in a position to show that it was used for committing the offence only after it was stolen from his possession. In that situation, we are unable to see why the vehicle should not be released in the owner's favour during the pendency of the trial.

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23. Learned Counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1)(c) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1)(d) would come into play only after a Court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section 39(1)(d) cannot be used against exercise of the magisterial power to release the vehicle during pendency of the trial".



3.In case, the Magistrate finds that there is no case made out for release of the vehicle, the respondent shall proceed with the impugned proceedings in the impugned show cause, dated 05.01.2022 and to bring a closure to the issue.

4.Therefore, this writ petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

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 District Forest Officer,  
Madurai.

2.The Forester,  
Usilampatti,  
Madurai District,  
WLOR No.4/2021.

+1 CC to M/s.T.A.EBENEZER, Advocate ( SR-14960[F] dated 28/03/2022 )

+1 CC to M/s.SPL GP ( SR-14916[F] dated 28/03/2022 )

W.P. (MD) .No.4215 of 2022  
25.03.2022

RS (07.04.2022) 3P-5C