

IN THE COURT OF THE DISTRICT JUDGE, KARUR
PRESENT:-THIRU R. SHANMUGASUNDARAM B.Com., L.L.B,
DISTRICT JUDGE.

Monday, the 30th day of January 2023

Crl.M.P.No.1742/2021

Kuppusamy

...Petitioner/Owner of the property

vs.

1. The Revenue Divisional Officer,
Karur District, Karur.
2. The Tahsildar,
Manmangalam Taluk,
Karur District.
3. The Assistant Director of Geology and Mining,
Collectorate, Karur District, Karur ...Respondents/Complainant

This petition coming before me for final hearing on 04.08.2022 in the presence of Thiru D. Arasu, advocate for the petitioner and Thiru N. Senthilkumar, Public Prosecutor, advocate for the respondents and upon hearing the arguments on the both side and having stood over for consideration till this day, this Court passed the following

ORDER:-

The petitioner/respondent has filed this petition u/s.451 of Cr.P.C., seeking return of RC Book for interim custody.

2) This Court by its order dated 15.11.2021 has ordered to return the original RC book of Ashok Leyland Multi Axle Goods Vehicle Tusker Lorry bearing registration No.TN 28 AH 4755 to the petitioner subject to the execution of undertaking affidavit that he would return the RC book soon after the renewal of the lorry concerned on or before 15.12.2021. However, the petitioner failed to produce the RC book within the above said date. Therefore, this Court issued show cause notice dated 27.07.2022 to the petitioner. The petitioner received the show cause

notice on 04.08.2022. In spite of the show cause notice received by the petitioner, he failed to appear and give sufficient cause for non-production of the RC book to the Court as per the condition dated 15.11.2021.

3) The respondents have ceased the vehicle bearing registration No.TN 28 AH 4755. Thereafter, the petitioner has filed a Writ petition in W.P.(MD). No.23164/2019 before the Honourable Madurai Bench of Madras High Court and the Honourable Madurai Bench of Madras High Court in W.P.(MD). No.23164/2019 dated 04.11.2019 has directed the petitioner that the petitioner may thus approach the concerned District Court seeking release of the vehicle in question and the Writ petition, granting liberty to the petitioner to move the Special Court for the release of the vehicle in question and connected reliefs. Thereafter, the petitioner has filed a petition u/s.451 of Cr.P.C., to pass an order to return the above said vehicle on interim custody to him. This Court by its order in CrI.M.P.No.1413/2019 dated 27.01.2020 has handed over the interim custody of the vehicle to the petitioner on following conditions that he is directed to surrender the original R.C. Book and also to deposit a sum of Rs.1,00,000/- before this Court and on compliance of the condition, the above vehicle is ordered to be returned to the petitioner on interim custody and further, he shall execute a bond for a sum of Rs.5,00,000/- with two sureties each for like sum to the satisfaction of this Court and he shall file an undertaking affidavit that the vehicle will not be used in similar type of offence in future and he should not alter the nature and character of the vehicle and she should not encumber or alienate the same without prior permission of the Court. Further, he should produce the vehicle as and when required by this Court. Subsequently, the petitioner has filed this present petition seeking to return the RC book and accordingly, this Court by its order dated 15.11.2021 has ordered to return the RC book of the Ashok Leyland Multi Axle Goods Vehicle Tuskor Lorry bearing registration No.TN 28 AH 4755 to the petitioner subject to the execution of undertaking affidavit that he would return the RC book soon after the renewal of the lorry concerned on or before 15.12.2021.

4) This Court is a designated Special Court constituted to deal with the offences in contravenes of the Provisions of the Mines and Minerals (Development and Regulation) Act 1957, as per the direction issued by the Honourable Madras High Court in W.P.(MD) No.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018 and as per the Government Order in G.O.Ms.No.298, Home (Courts-II) Department, dated 13.06.2019. Further, the Honourable Madras High Court in Review Application (MD) Nos.80 to 82 of 2019 dated 09.09.2019 directed that the designated Special Court to try the offence on the private complaint filed by the competent authority. As far as this case is concerned, no private complaint is lodged by the competent authority before this Court from the date of the FIR to till this date.

5) Section 21(4-A) of the Mines and Minerals Act is contemplated for the confiscation of the vehicle. Further, as per the above said Provisions, the Special Court alone is competent to pass the confiscation order.

6) The power of the Designated Court to confiscate the vehicles involved in contravenes of the Provisions of the Mines and Minerals (Development and Regulation) Act 1957 has been held by the Honourable High Court of Madras in the above Review Application (MD) Nos.80 to 82 of 2019 dated 09.09.2019 as follows:

“ As per these provisions, the power of seizure is certainly available with the officer or authority empowered accordingly. Such a seizure would involve the actual mineral, machinery by way of tool and equipment, vehicle or such incidental materials. As per Section 21(4A) of the Mines and Minerals Act, such seized materials are liable to be confiscated by an order of Court competent to take cognizance of the offence under section 21(1) of the Mines and Minerals Act and the seized materials are to be disposed of in accordance with the directions of such Court. Taking note of the aforesaid provisions, we have held that what is permissible to the Revenue Officials, namely the officer authorized, is only the seizure and not confiscation or disposal of such materials. The said reasoning adopted, in our considered view, does not require any re-look, though we respectfully agree with the

learned Advocate General that there is a factual error in coming to conclusion that insertion has taken place only by Act 10 of 2015 which is, in fact only an amendment. We may note that the Act does not specifically deal with the issue qua release. Once we hold that the power of confiscation lies with the Court alone, the question quo release shall also be decided by it alone. We are dealing with a penal provision in a regulatory statute and therefore the word “shall” will have to be given the actual meaning. Thus, confiscation is the rule and release in the consequence of an adjudication. The question of release would arise only on the decision as to whether confiscation is required or not”.

Therefore, as per the above said dictum laid down by the Honourable High Court, the confiscation is the rule and release in the consequence, of an adjudication.

7) The competent authority has not taken any steps to lodge a private complaint or file a petition to confiscate vehicle before this Court as per the directions given by the Honourable Madras High Court in W.P.(MD) No.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018.

8) The respondents have seized the vehicle. Therefore, the above said vehicle became the case property and is subjected for confiscation. In such circumstances, based on the petition and undertaking given by the petitioner, the above said vehicle was handed over to the petitioner as interim custody. Thereafter, the petitioner by this present application sought for the return of RC book. Accordingly, RC book was handed over to him. Now, the petitioner failed to return the same. Therefore, the petitioner has violated the condition imposed by this Court in the present petition dated 15.11.2021. Hence, the petitioner loses his right to have interim custody of the vehicle. Further, the petitioner who fails to comply with the condition of the Court is bound to return the vehicle since he has failed to return the RC book of Ashok Leyland Multi Axle Goods Vehicle Tusker Lorry bearing registration No.TN 28 AH 4755 . Therefore, it is not safe to allow him to have the Ashok Leyland Multi Axle Goods Vehicle Tusker Lorry bearing registration No.TN 28 AH 4755 on interim

custody. Therefore, it is just and necessary to pass an order to recall the interim custody of the Ashok Leyland Multi Axle Goods Vehicle Tusker Lorry bearing registration No.TN 28 AH 4755 from the petitioner. Accordingly, it is ordered that the petitioner is directed to hand over the Ashok Leyland Multi Axle Goods Vehicle Tusker Lorry bearing registration No.TN 28 AH 4755. Accordingly, interim custody granted by this Court in CrI.M.P.No.1413/2019 is not extended and is recalled.

9) In consequence, the petitioner is directed to return and produce the Ashok Leyland Multi Axle Goods Vehicle Tusker Lorry bearing registration No.TN 28 AH 4755 to this Court within 15 days from today. Call on 13.02.2023.

Dictated to the steno-typist, transcribed by him corrected and pronounced by me in open Court on this the 30th day of January 2023.

PRINCIPAL DISTRICT JUDGE,
KARUR.

Copy to
The Petitioner through counsel,
Respondent through Public Prosecutor.