



2020:APHC:33981

HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION NO: 10365 OF 2020

Between:

1. Vemuluri Swamy Naidu, S/o.Satyam, aged49 years,
Auto Driver, R/o.1-78, Pinapalla, Alamuru Mandal, East Godavari District.

...PETITIONER(S)

AND:

1. State of Andhra Pradesh Rep. by its Principal Secretary, Home
Department, Secretariat, Velagapudi, Amaravati.
2. The Station House Officer, Alamuru Police Station,
Alamuru, East Godavari District.
3. The District Collector, East Godavari District at Kakinada.
4. The Joint Collector, Kakinada, East Godavari District.
5. The Tahsildar, Alamuru, East Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): BOLLA VENKATA RAMA RAO

Counsel for the Respondents: GP FOR HOME

The Court made the following: ORDER



*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ WRIT PETITION No.10365 OF 2020

% 22.06.2020

WRIT PETITION No.10365 OF 2020:

Between:

Vemuri Swamy Naidu, S/o. Satyam,
Aged 49 years, Auto Driver, R/o.1-78, Pinapalla,
Alamuru Mandal, East Godavari District.

....Petitioner

And

- 1) The State of Andhra Pradesh, rep.
By its Principal Secretary, Home Department,
Secretariat, Velagapudi, Amaravathi,
Guntur District & **four others.**

...Respondents

! Counsel for Petitioner : Sri B.V. Rama Rao

^ Counsel for Respondents : 1) GP for Home for
R1 & R2.
2) GP for Revenue for
R3 to R5.

< **Gist:**

> **Head Note:**

? **Cases referred:**

- 1) 2012(4) ALT 370 = MANU/AP/0279/2012

This court made the following :

**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO****Writ Petition No.10365 of 2020****ORDER:**

The petitioner seeks to issue writ of *mandamus* declaring the action of 2nd respondent in seizing the petitioner's Auto Rickshaw bearing No. AP 05 TD 7201 in relation to Crime No.144 of 2020 of Alamuru Police Station, East Godavari District without following the procedure as contemplated under law as illegal, arbitrary and for a consequential direction to respondent No.2 to release the vehicle.

2. The facts briefly are that the petitioner is the owner of Auto Rickshaw bearing No. AP 05 TD 7201. On the early hours of 27.05.2020, the 2nd respondent along with his staff while checking the vehicles at Kothuru Centre, Alamuru Mandal, intercepted the aforesaid vehicle and on verification, found 700 Kgs of PDS rice was being illegally transported. He seized the essential commodity as well as the vehicle and prepared an occurrence report and basing on the said report, he registered a case in Crime No.144 of 2020 of Alamuru Police Station under Section 188 of IPC and Section 7 of Essential Commodities Act, 1955 (for short, "EC Act")

3. The petitioner who is the owner-cum-driver of the seized Auto Rickshaw submits that he filed a petition before the 3rd respondent for interim custody of the vehicle, but it was returned on the ground that the case was booked under Section 7 of EC Act and he has no



jurisdiction to entertain the petition. Thereafter, he filed a petition under Section 457 of Cr.PC before the Judicial Magistrate of First Class, Alamuru for release of the vehicle but the petition was returned on the ground of want of jurisdiction.

Hence, the writ petition.

4. Heard.

5. As per the submission of learned counsel for petitioner, both the District Collector, East Godavari District/3rd respondent and Judicial First Class Magistrate, Alamuru have rejected the petition filed by the petitioner on the ground that they have no jurisdiction to entertain the petition.

On hearing learned counsel for petitioner and learned Government Pleader for Civil Supplies and on perusal of legal position, the present case falls under peculiar circumstances. As per Section 6-E of the EC Act, when an essential commodity and conveyance used for carrying essential commodity were seized in pursuance of an order made under Section 3 of EC Act, then, pending the confiscation proceedings under Section 6-A, it is the Collector or the State Government concerned under Section 6-C shall alone but not the Court or Tribunal or other authority, have the power to pass orders regarding possession, delivery, disposal, release or distribution of such essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance. Section 6-E reads thus:

**Sec.6-E. Bar of jurisdiction in certain cases:-**

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, 1[the State Government concerned under Section 6-C] shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, 2[any Court, Tribunal or other 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.]

6. Therefore, Section 6-E engrafts a bar on Court, Tribunal or other authority to pass any order in relation to the essential commodity or the vehicle which were seized pending confiscation proceedings under Section 6-A and in such instances, the Collector or the State Government concerned under Section 6-C alone shall have the power to pass suitable orders in respect of the seized essential commodity and concerned vehicle. In similar circumstances, in ***B. Pundarikam and others vs. The District Collector, Medak at Sangareddy and others***¹, a learned Judge of High Court of Andhra Pradesh applying the second proviso to Section 6-A(1) of EC Act, directed the respondent/District Collector to determine the market value of the vehicle involved in illegal transportation of essential commodities and further directed the writ petitioner who was the owner of the said vehicle to offer bank guarantee or an immovable property security or any third party security proportionate to the value of the vehicle for granting interim custody pending confiscation

¹ 2012(4) ALT 370 = MANU/AP/0279/2012



proceedings. From the above jurisprudence, there can be no demur that pending confiscation proceedings, it is the District Collector who is authorized to pass orders for granting interim custody of the seized vehicle. However, in the instant case, the submission of learned Government Pleader on instructions is that on seizure of the rice and Auto Rickshaw, the Police have only registered Crime No.144 of 2020 but so far no proceedings under Section 6-A of EC Act are initiated before 3rd respondent. Therefore, it appears the 3rd respondent rightly rejected the petition filed before him seeking interim custody of the vehicle. Thereafter the petitioner, it appears, filed a petition under Section 457 of Cr.PC before the learned Judicial First Class Magistrate, Alamuru but the same was returned on the ground of lack of jurisdiction, probably keeping in mind the mandate under Section 6-E of EC Act, it should be noted that if Section 6-A proceedings were initiated and pending the Judicial Magistrate of First Class, Alamuru might be right in returning the petition filed under Section 457 of Cr.PC seeking interim custody of the vehicle. However, since Section 6-A proceedings are not initiated so far and as the crime above is registered and investigation is pending, in the considered view of this court, learned Judicial First Class Magistrate, Alamuru is competent to entertain the petition of the petitioner. Otherwise the petitioner would be left without remedy.



7. Therefore, this writ petition is allowed and the Station House Officer, Alamuru Police Station is directed to produce the seized vehicle i.e., Auto Rickshaw bearing No.AP 05 TD 7201 in Crime No.144 of 2020 within three (03) days from the date of receipt of copy of this order before the Judicial First Class Magistrate, Alamuru. The petitioner is at liberty to file a fresh petition seeking interim custody of the Auto Rickshaw, in which case, Judicial First Class Magistrate, Alamuru shall consider the same and pass an appropriate order in accordance with law expeditiously. No costs.

As a sequel, Interlocutory Applications, if any, pending for consideration shall stand closed.

U. DURGA PRASAD RAO, J

Dt: 22.06.2020.

**Note: LR copy to be marked.
B/o. MS**