

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.15183 of 2016
and
Crl.MP No.7513 of 2016

Velmurugan ... Petitioner/Accused

Vs

State rep.by
The Forest Range Officer,
Tamil Nadu Forest Department,
Ulundurpettai Division,
Ulundurpettai. ... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in Crl.R.P.No.10 of 2016 dated 15.06.2016 passed by the learned Principal Sessions Judge, Villupuram and in Crl.MP No.2691 of 2016 dated 22.03.2016 passed by the learned Judicial Magistrate No.II, Ulundurpet, in Crime No.31 of 2016 on the file of the respondent and to set aside the same and consequently, direct the respondent to return of JCB, bearing Registration No.TN-31AD-6120 to the petitioner.

For Petitioner : Mr.T.Dharani

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed praying to call for the records in Crl.R.P.No.10 of 2016 dated 15.06.2016 passed by the learned Principal Sessions Judge, Villupuram and to set aside the order passed in Crl.MP.No.2691 of 2016 dated 23.03.2016 passed by the learned Judicial Magistrate No.II, Ulundurpet, and to direct the respondent to return the said JCB to the petitioner.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. The case of the prosecution is that when the Officers of the Forest Department were on rounds on 13.03.2016, they noticed the vehicle namely JCB 3DX Hydraulic Excavator bearing Registration No. TN31.AD.6120, was found carrying sand from the forest area. Therefore, the Officers arrested five persons and also seized the JCB. The Officers also secured two tripper lorries and two motor cycles including the JCB in connection with the offence. The petitioner who is said to be the owner of the JCB filed CrI.MP.No.2691 of 2016 in Crime No.31 of 2016 under Section 451 Cr.P.C. before the learned Judicial Magistrate, Ulundurpet, which was dismissed on 22.03.2016, aggrieved by which, the petitioner filed Criminal Revision Petition No.10 of 2016, which was also dismissed by the learned Principal Sessions Judge, Villupuram on 15.06.2016, aggrieved by which, the petitioner is before this Court.

4. Under normal circumstances, this Court will not interfere with the orders passed by the Court below in exercise of powers under Section 482 Cr.P.C., when the aggrieved person had already moved the Sessions Court under Section 397 Cr.P.C.,

5. The learned Additional Public Prosecutor has also submitted that under Forest Act, there is no provision for confiscation of a vehicle like JCB, which has been used for digging sand unauthorizedly. Forest Act provides for confiscation of vehicles that are used for illegal transport of timbers and forest produce.

6. Be that as it may, the JCB is kept in the forest office since 13.03.2016, for almost four months. This by itself in the considered opinion of this Court is sufficient deterrence for the petitioner not to allow his JCB to be used for such purposes.

7. Hence, this Court is of the view that though the orders of the Court below does not suffer from serious infirmity, this Court is of the view that it will be in the interest of justice, if the JCB is directed to be handed over to the petitioner on the following conditions :

1. The petitioner shall submit necessary records before the learned Judicial Magistrate No.II, Ulundurpet, to establish the ownership of the vehicle;
2. The petitioner shall furnish a bond for Rs.5,00,000/- with two sureties to the satisfaction of the learned Magistrate;

3. The petitioner shall also take photograph of the JCB, in the presence of the Magistrate and the photograph shall

be certified by the Magistrate with seal; the JCB shall be produced before the trial Court as and when required;

4. The petitioner shall file an undertaking affidavit before the learned Magistrate that he will not permit the JCB for any such purpose.

In view of the above, this Criminal Original Petition is closed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Villupuram.
2. The Judicial Magistrate No.II,
Ulundurpet.
3. The Forest Range Officer,
Tamil Nadu Forest Department,
Ulundurpettai Division,
Ulundurpettai.
4. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.T.Dharani, Advocate, S.R.No.42741

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and
CrI.MP No.7513 of 2016

SCD(CO)
CA(11/08/2016)

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