



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.127 of 2016

R.Selvakani

... Petitioner / Petitioner/
Accused No.2

-vs-

The State rep.by
The Inspector of Police
Economical Offences Wing-II
Tirunelveli
Tirunelveli District

...Respondent / Respondent/
Respondent

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the order of the learned Chief Judicial Magistrate, Tirunelveli, dated 20.10.2015, made in CrI.M.P.No.760 of 2015, in Crime No.7 of 2014, on the file of the Inspector of Police, Economical Offences Wing-II, Tirunelveli District and consequently direct the respondent to handover back the JCB Heavy Vehicle bearing registration No.TN.69 S2572 as interim custody forthwith to the petitioner.

For Petitioner: Mr.S.Palani Velayutham

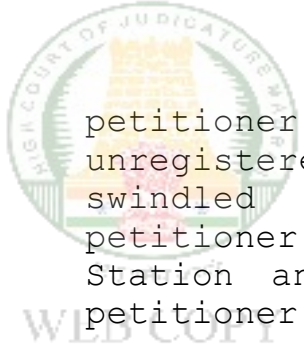
For Respondent: Mrs.S.Prabha
Govt.Advocate (CrI.Side)

O R D E R

This matter is squarely covered by the Apex Court's Judgment in **Sunderbhai Ambalal Desai v. State of Gujarat [2003 (1) CTC 175 (SC)]**.

2. The revision petitioner herein is the registered owner of JCB (TN.69 S2572). The said vehicle has been seized and have been concerned in this case.

3. The learned counsel for the petitioner submitted that even as per the prosecution case, it is alleged that not only the



petitioner and also others have swindled the amount of unregistered chit subscribers. In such view of the matter, the swindled amount cannot be specifically attributable to the petitioner's JCB. The JCB is continued to be kept in the Police Station and ultimately it will become useless. The revision petitioner will safeguard the vehicle.

4. On the other hand, the learned Government Advocate (Criminal Side) submitted that this JCB is proceeds of crime. Steps have been taken to attach it and letter has been addressed to A.D.G.P., E.O.W., to that effect. If the JCB is handed over to the petitioner, he will misuse and misappropriate it.

5. In view of the nature of the vehicle, inconclusiveness of the steps taken and question of law as to the proposed attachment and allowing the JCB to remain in the Police Station will loose its material value in due course. In such view of the matter, the principles of **Sunderbhai Ambalal Desai** (supra) squarely applies to this case.

6. However, in view of the stand taken by the respondent / Police, some safety clauses should be incorporated in the order.

7. Ordered as under:

- i. This criminal revision is allowed.
- ii. The Order, dated 20.10.2015, passed in Crl.M.P.No.760 of 2015, by the learned Chief Judicial Magistrate, Tirunelveli, is set aside.
- iii. The learned Magistrate, will give interim custody of JCB (TN.69 S2572) to the revision petitioner.
- iv. The revision petitioner will execute a personal bond for Rs.7,00,000/- (Rupees seven lakhs only) to the satisfaction of the said Magistrate. It is made clear that no property document, Solvency Certificate from Tahsildar or surety shall be insisted upon.
- v. It is made clear that this interim custody is subject to the proceedings initiated before the Competent Authority. If any adverse order is passed, it is open to the revision petitioner to challenge it before the appropriate forum in a manner known to law.
- vi. The said vehicle shall be photographed, the signature of the revision petitioner shall be obtained and they shall be kept in the case records.
- vii. Until final property order is passed by the said Magistrate or the authority before whom confiscation proceedings are pending, the revision



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petitioner shall not dispose of, alter or change the vehicle.

viii. The revision petitioner shall cause the production of vehicle as and when so ordered by the said Magistrate or competent authority.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To:

1.The Chief Judicial Magistrate, Tirunelveli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

3.The Inspector of Police,
Economical Offences Wing-II,
Tirunelveli, Tirunelveli District.

+1 cc to M/s.S.Palanivelayutham, Advocate in SR.No.33179

krk

SDR/KBM/01.07.2016 : 3P/5C

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