



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON 02.11.2016
ORDERS PRONOUNCED ON 11.11.2016

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CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.688 of 2016

Mahendran : Petitioner

Vs.

State Rep.by
The Inspector of Police,
Sattur Town Police Station,
Sattur,
Virudhunagar District.
(Crime No.535 of 2016) : Respondent

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records of the learned Judicial Magistrate No.II, Sattur in Cr.M.P.No.5044 of 2016, dated 26.09.2016 and to set aside the same and further direct the learned Judicial Magistrate No.II, Sattur to grant interim custody of the vehicle viz., Agricultural Tractor Vehicle bearing Registration No.TN-60-2191 and its Trailer bearing Registration No.TN-67-P-3395 to the petitioner.

For Petitioner :Mr.P.Saravana Kumar
For Respondents :Mr.P.Kandasamy
Government Advocate(Cr1. Side)

O R D E R

This Revision has been filed praying to set aside the order passed by the learned Judicial Magistrate No.II, Sattur in Cr.M.P.No.5044 of 2016, dated 26.09.2016 and further direct the learned Judicial Magistrate No.II, Sattur, to grant interim custody of the vehicle viz., Agricultural Tractor, bearing Registration No. TN-60-2191 and its Trailer bearing Registration No.TN-67-P-3395, to the petitioner.

2. The Revision Petitioner is the sole accused in a case Registered in Crime No.535 of 2016, for the offence under Section 379 IPC and Section 21(1) of Mines and Minerals (Development and



Regulation) Act, 1957. The respondent seized the petitioner's vehicle viz., Tractor bearing Registration No.TN-60-2191 along with Trailer bearing Registration No.TN-67-P-3395, for transporting the sand illegally from Vaippar. An FIR was registered on 14.09.2016, on the same day.

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3. On intimation from the Police, the Revenue Divisional Officer, Sattur, initiated proceedings fixing the fine amount of Rs.25,535/- against the petitioner, by issuing show-cause notice, dated 23.09.2016. The petitioner filed Crl.M.P.No.5044 of 2016 for interim custody of the said seized vehicle viz., Tractor along with Trailer, before the learned Judicial Magistrate No.2, Sattur. After hearing the parties, the learned Judicial Magistrate No.2, Sattur, dismissed the petition. Aggrieved by the same, the petitioner has filed this Criminal Revision Case, for release of the vehicle in question.

4. The learned counsel appearing for the petitioner would submit that the petitioner is the owner of the seized vehicle. He would further submit that the seized vehicle has been kept idle and they are being kept in open sky and ultimately, it will become a scrap-value. It is further submitted that there is no bar for interim custody of the seized vehicle and the revision petitioner will participate in the proceedings initiated by the Revenue Divisional Officer, Sattur and the petitioner will challenge the same before the competent authority, if any adverse orders is passed in the said confiscation proceedings. In support of his contention, the learned counsel for the petitioner relied on an unreported Judgment of this Court made in CRL. RC(MD)No.394 of 2016, dated 21.06.2016.

5. The learned Government Advocate (crl.side) appearing for the respondent contends that already confiscation proceedings have been initiated by the Revenue Divisional Officer, Sattur, to confiscate the said vehicle to the State and if the vehicle in question is released, the petitioner, being the habitual sand thief, may take advantage of the situation and cause hindrance to the confiscation proceedings. The learned Government Advocate (crl.side) almost reiterates the very same contention, which placed before the learned Judicial Magistrate No.2, Sattur.

6. This Court has anxiously considered the rival submissions and also perused the impugned order of dismissal and the materials on records.

7. Admittedly, there is no rival claim in respect of the said seized vehicle in this case. There is no dispute that the petitioner is the owner of the seized vehicle, however, concerned learned Magistrate also decides the ownership of the said vehicle on production of relevant documents by the petitioner. It is further admitted by both sides that confiscation proceedings have been initiated against the petitioner by revenue authorities and it is pending. Further, no Court has declared so far that the petitioner is a habitual offender in respect of mineral theft, except the case in Crime No.409 of 2014, which is pending for investigation. This Court also considers the Judgment pronounced in **Sunderbhai Ambalal Desai**



Vs. State of Gujarat reported in (2003 (1) CTC 175) and this Court ordered as under:-

i. The Criminal Revision is allowed by setting aside the order, dated 26.09.2016, passed in Cr.M.P.No.5044 of 2016, by the learned Judicial Magistrate No.II, Sattur.

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ii. The learned Judicial Magistrate No.2, Sattur, will give the interim custody of vehicle viz., Tractor bearing Registration No. TN-60-2191 and its Trailer bearing Registration No. TN-67-P-3395, to the revision petitioner, on execution of a personal bond for a sum of Rs.3,00,000/-, by the revision petitioner, to the satisfaction of the said Magistrate.

iii. The interim custody of the vehicle is subject to the confiscation proceedings initiated against the petitioner by the Revenue Divisional Officer, Sattur.

iv. The said vehicle shall be photographed, the signature of the Revision Petitioner shall be obtained and it shall be kept in case records.

v. Until final property order is passed by the said learned Magistrate or the authority before whom confiscation proceedings are pending, the revision petitioner shall not dispose of, alter or change the vehicle.

vi. The revision petitioner shall cause the production of the vehicle so ordered by the said Magistrate.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

MPK

To

1.The Judicial Magistrate No.2, Sattur.

2.The Inspector of Police,
Sattur Town Police Station,
Sattur, Virudhunagar District.

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

+1CC to Mr.P.Saravanakumar, Advocate Sr.No.68081

GJM/CK/22.11.16-3p-5C

Pre-Delivery Order made in
Crl.RC(MD)No.688 of 2016
Dated:- 11.11.2016