

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.8.2017

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CrI.RC.No.887 of 2017

Alamelu

... Petitioner

Vs.

State represented by
The Inspector of Police,
T-16, Nazarethpet Police Station,
Crime No.858 of 2017
Chennai Police.

.. Respondent/Complainant

Petition filed under Section 397 and 401 of Cr.P.C to call for the records in CrI.M.P.No.2424 of 2017 on the file of the learned Judicial Magistrate No.1, Poonamalle, set aside the order dated 23.06.2017 and direct the learned Magistrate to return the TATA MOTORS Tipper Lorry bearing Registration No. TN-09-F-1665 to the custody of the petitioner herein.

For Appellant

: Mr.A.M.Rahamath Ali

For Respondents

: Mr.C.Iyyappa Raj

Additional Public Prosecutor

ORDER

This revision has been filed against the order passed by the Judicial Magistrate No.I, Poonamalle in CrI.M.P.No.2424 of 2017 in Cr.No.858 of 2017 on the file of T-16, Nazarathpet Police Station, by order dated 23.06.2017.

2. The vehicle in question is a TATA MOTORS Tipper Lorry bearing Registration No. TN-09-F-1665. The said lorry originally belongs to one Sadik Ali from whom, one Tirumalai had taken the lorry for lease or the same had been entrusted by the said Sadik Ali either for sale or for lease. With the said strength of entrustment of the vehicle, the said Tirumalai had been running the said vehicle for transportation of earth being removed from Chembarambakkam tank at Sriperumbudur Taluk, Kancheepuram District where a lease or work order had seems to have been given by the Water Resources Department of the State to desilt the tank and to strengthen the banks.

3. While so on 29.4.2017, the concerned Tahsildar on suspicion seems to have visited the spot, i.e., the lake where the earth excavation work was going on and on seeing the same, the Tahsildar on the impression that the earth mining work was undertaken by some people without authority of law, had seized the vehicle which

were pressed into service for the said work towards the said contractor including the present vehicle i.e., the lorry which is in question.

4. It is the case of the respondent prosecution that while he was bringing the said vehicle seized by the Tahsildar, in between, the driver of one of the vehicle i.e. the vehicle in question herein had, after developed some commotion with the Tahsildar, abruptly taken the vehicle from the custody of the Tahsildar.

5. Because of such an incident, that concerned Tahsildar seems to have given a complaint before the respondent police and the police is investigating the case.

6. Subsequently, since the vehicle has been entrusted or given on lease / sale to the said Tirumalai, who is none other than the husband of the petitioner herein, who has effected the sale from Sadik Ali to and in favour of the petitioner. Accordingly, the vehicle in question has been transferred in the name of the petitioner on 23.5.2017.

7. Subsequently, the petitioner had moved an application before the court below to seek for an interim custody of the vehicle and the

said petition has been rejected by the present impugned order, as against which, this revision has been filed.

8. After hearing this revision, at the admission stage, this Court directed the learned Additional Public Prosecutor to get instructions as to whether the police had investigated the issue; as to whether any illegal sand mining or earth mining had taken place and in that case if this vehicle had been involved and whether the investigation has further revealed the continuing of offence of illegal mining in this regard.

9. Pursuant to the said directives issued by this Court, the learned Additional Public Prosecutor has produced certain documents by way of typed set of papers. On a perusal of the same, it reveals that the rehabilitation and improvement of Chembarambakkam Tank work has been entrusted to a contractor by order dated 29.2.2016 of the Water Resource Department of the State. As per the certificate given by the concerned authority of Public Works Department, it has been certified that the said work had been continuing. The Superintending Engineer of the WRD, Palar Basin Circle, Chepauk has also given a statement before the respondent police that the said rehabilitation and improvement of Chembarambakkam Tank work was

still going on.

10. The learned Additional Public Prosecutor has also produced document whereby one Arputharaj, who claims to be the Manager of the contractor company to undertake the rehabilitation work, has given a statement that the vehicle in question i.e., the lorry bearing Registration No. TN-09-F-1665 since had been stationed at the office of the contractor by the driver, the same has been entrusted to the respondent police on 01.5.2017.

11. The learned counsel appearing for the petitioner would submit that the lorry in question was not involved in any illegal sand or earth mining work, instead the lorry was pressed into service for the rehabilitation work of Chembarambakkam lake for which the contractor has got a licence from the Government and these factors has been confirmed by the officials concerned of the Public Works Department. When that being so, the learned counsel appearing for the petitioner would submit that the Tahsildar concerned on mistaken identity on the pretext that some illegal mining had taken place in the said lake had wrongly seized this vehicle and while he was wrongly seizing the vehicle, it was repulsed by the driver of the vehicle and with the result, the driver has managed to take the vehicle and has

stationed it at the office of the contractor.

12. Therefore, if at all any alleged offence, as has been stated in the complaint said to have been given by the Tahsildar, it is only out of the commotion between the Tahsildar and the driver of the vehicle including the vehicle in question and in this regard, this petitioner being the owner has no grievance to investigate the same by the respondent police.

13. However, insofar as the vehicle in question is concerned, the same was already entrusted to the petitioner through her husband by the erstwhile owner and only the transfer of the vehicle has been effected on 23.5.2017. But in all practical purposes, the petitioner being the owner of the vehicle and the vehicle has also not been involved in any illegal act, much less the illegal sand or earth mining, therefore, there can be no impediment for the Court below to release the vehicle for interim custody.

14. I have considered the said facts and circumstances of the case as well as the submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

15. It is the fact that the rehabilitation work on Chembarambakkam lake was entrusted to the contractor concerned by the State Government and with the result, the said work was continuously going on, as certified by the concerned department.

16. When the vehicle in question was also one of the vehicle involved in the said services of earth excavation or transportation in the Chembarambakkam lake, it cannot be *prima facie* construed that the vehicle in question has also involved in any criminal / illegal act. When that being so, the alleged seizure of the vehicle by the Tahsildar concerned, whether was warranted or not also is in question.

17. Since *prima facie*, it is revealed that the vehicle was not involved in any crime, merely because of the wrong presumption on the part of the Tahsildar, the vehicle cannot be endlessly kept at the custody of the respondent police that too in a open place exposed to sunlight and rain.

18. Moreover, since the petitioner being the owner of the vehicle and he has also produced documents to show that she has

become the owner of the vehicle and no other person has claimed the ownership of the said vehicle, there can be no further impediment as to decide whether the petitioner is entitled to claim the vehicle by way of interim custody.

19. Considering all these aspects, this Court is of the considered view that this petition, at this juncture can be considered and the vehicle in question i.e., Tipper lorry bearing Registration No.TN-09-F-1665 shall be given to the petitioner for interim custody on the petitioner complying the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) to the satisfaction of Judicial Magistrate No.1, Poonamalle within a period of two weeks from the date of receipt of a copy of this order ;

(ii) As and when the vehicle is required by the respondent police, the petitioner shall produce the same with RC book for their verification and record of the respondent police ;

(iii) The petitioner shall not sell or pledge the vehicle without the orders of the trial Court.

20. In the result, this Criminal revision case is allowed setting aside the order of the Court below.

Index: Yes
Internet: Yes
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22.08.2017

Note: Issue on 28.8.2017

To

1. The Judicial Magistrate No.1,
Poonamalle.
2. The Inspector of Police,
T-16, Nazarethpet Police Station,
Chennai.

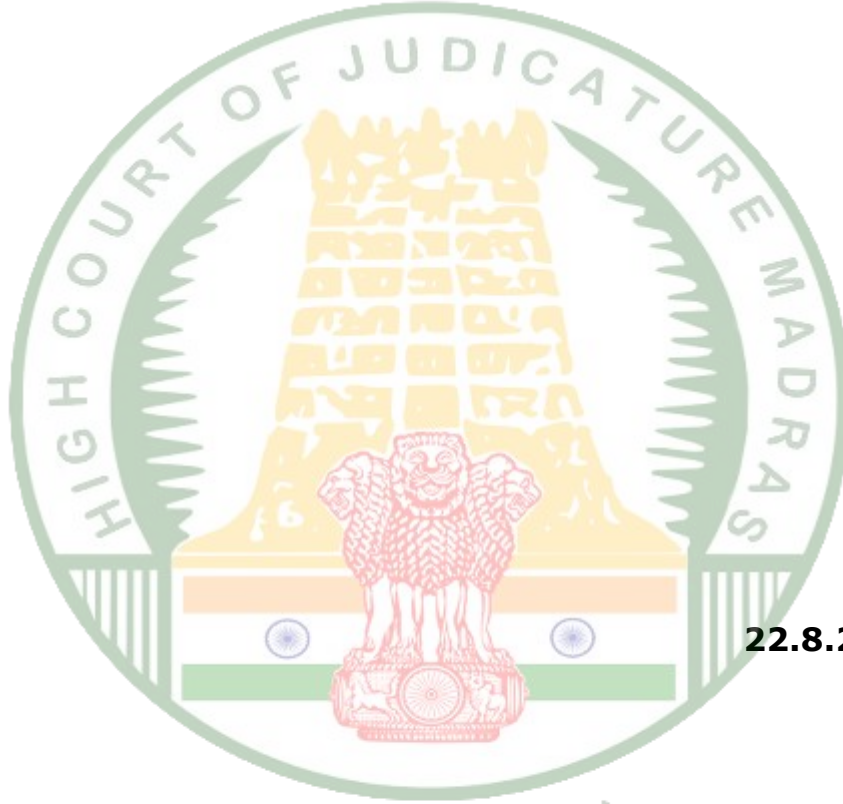


R.SURESH KUMAR,J.

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