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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

Crl.R.C.Nos.1256 and 1257 of 2017

B.Palani

... Petitioner in both Crl.R.Cs.

versus

State Rep. By
Inspector of Police,
Brammadesam Station.
Cr.No.351 of 2017

... Respondent in both Crl.R.Cs.

Prayer in Crl.R.C.No.1256 of 2017: Revision filed under Section 397 r/w. 401 of Cr.P.C. praying to set aside the order dated 11.09.2017 passed by the learned Judicial Magistrate No.II, Tindivanam, Villupuram District, dismissing the petition filed under Section 457 of Cr.P.C. to produce the John Decree Tractor bearing Reg.No.TN16B 1164, Chassis No.IPY5055E EBA006712, Engine No.PY3029H007539.

Prayer in Crl.R.C.No.1257 of 2017: Revision filed under Section 397 r/w. 401 of Cr.P.C. praying to set aside the order dated 16.08.2017, passed by the learned Judicial Magistrate No.II Tindivanam, Villupuram District, dismissing the petition filed under Section 157 Cr.P.C. to issue order to the respondent Police to forward the FIR which was registered against the petitioner's vehicle in Cr.No.351 of 2017 under Section 21(1) Mines Mineral Act.

For Petitioner in both
CRL.RCS

: Mr.K.Sivakumar

For Respondent in both
CRL.RCS

: Mr.V.Arul,
Additional Public Prosecutor

COMMON ORDER

On 17.07.2017, the respondent police filed FIR in Crime No.351/17 against the petitioner under Section 21(1) of Mines and Minerals (Development & Regulation) Act 1957 (for short 'the Act').

2. Consequent upon the registration of the crime, the respondent police seized the vehicle, viz., John Deere Tractor



Bearing Reg. No.TN16B 1164 Chasis No.IPY 5055E EBA006712 Engine No.PY3029H007539.

3. As the respondent failed to forward the FIR, which was registered against the petitioner's vehicle in Cr.No.351 of 2017 under Section 21(1) of the Act and to produce the seized vehicle before the Jurisdictional Court, i.e., Judicial Magistrate No.II, Tindivanam, the petitioner filed a petition before the learned Judicial Magistrate No.II, Tindivanam in C.M.P.No.3636 of 2017 praying for direction to the respondent to forward the FIR to the Court. The learned Judicial Magistrate No.II, Tindivanam dismissed the petition vide order dated 16.08.2017 on the ground that "the police only registered FIR not complaint as per the decision of this Hon'ble High Court Division Bench in Sengal vs. State of Tamilnadu case and no authority to take cognizance of the offence and not maintainable under law at this stage."

4. The petitioner has preferred this revision against the order passed by the lower court on the following grounds :-

a. The respondent has not followed the procedure laid down in Sec.157 of Cr.P.C.

b. The respondent has not produced a report about the seized vehicle to the concerned Magistrate as per Sec. 102 of Cr.P.C.

c. The learned trial Court failed to note that it is the duty of the respondent to send the FIR to the concerned Magistrate who take cognizance of the said offence.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. Learned counsel appearing for the petitioner placed reliance on the decision of the Supreme Court reported in 2003 SCC Criminal 1943 (Sundarbai vs. Ambalal Desai), wherein, the necessity of handing over the possession of vehicle to appropriate person has been highlighted.

7. In order to appreciate the contentions raised, it is necessary to consider the provision of Section 21(1) of Mines and Minerals (Development & Regulation) Act, 1957 and for better clarity, the same is extracted hereunder:-

"21. Penalties.—1[(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.]



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(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable 2[with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees], or with both, and in the case of a continuing contravention, with an additional fine which may extend to 3[five hundred rupees] for every day during which such contravention continues after conviction for the first such contravention. 4[(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land. 5[(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.]

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.]

8. It is not in dispute that the vehicle in question has been seized under Sub-Section 4 of Section 21 of the Act. It is relevant to point out that the trial court has not understood the procedure to be followed.



9. This Court has considered the contentions advanced and perused the decision relied upon by the learned counsel for the petitioner. The direction issued by the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai v. State of Gujarat* (AIR 2003 Supreme Court 638) with regard to return of property is reproduced below:

"(1) preparing detailed proper panchanama of such articles:

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under [Section 451 Cr.P.C.](#) The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs or such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under [Section 451 Cr.P.C.](#) to impose any other appropriate condition."

In *Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr.*, [1977] 4 SCC 358, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that



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the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

10. Neither police nor revenue officials can keep in their custody vehicles seized for alleged violations of the provisions of Mines and Minerals (Development and Regulation) Act 1957 without obtaining necessary orders for confiscation from the Judicial Magistrates concerned the Madras High Court Bench here has ruled.

11. Disposing of a batch of writ petitions filed by the owners of tipper lorries, trucks, tractors, trailers and earth movers that were reportedly used for illegal mining of sand and gravel in southern districts, Justice Vinod Kumar Sharma (as His Lordship then was) observed that the power of the officials was limited to the extent of seizing the vehicles and producing them before the jurisdictional Judicial Magistrates. On such production, it was upto the Magistrates to decide whether to release the vehicle subject to certain conditions or to keep it in custody until completion of confiscation proceedings. While taking such decisions, the Magistrates need not even wait for the officials to lodge a formal complaint against the accused under Section 22 of the 1957 Act.

12. For the reasons aforesaid, these criminal revision petitions are disposed of directing the learned Magistrate to



dispose of the application for return of vehicle in the light of the legal position indicated above and to pass orders within 7 days from the date of receipt of a copy of this order.

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Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ogy/GLN

To

1.The Judicial Magistrate No.II,
Tindivanam,
Villupuram District

2.Inspector of Police,
Brammadesam Station.

3.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Records,
High Court, Madras.

+1cc to Mr.K.Sivakumar, Advocate sr.no.86117

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nr 02/02/2018