



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Crl.O.P.(MD).No.15526 of 2017

N.Sivakumar

... Petitioner

Vs.

The Sub-Inspector of Police,
Velayuthampalayam Police Station,
Karur District.
(Cr.No.390 of 2017)

... Respondent

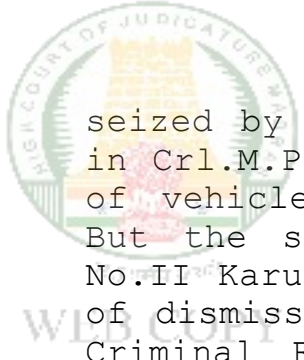
Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to set aside the order made in Crl.R.C.No.36 of 2017 on the file of the Principal Sessions Judge, Karur, dated 13.10.2017 and confirming the order made in Crl.M.P.No.5834 of 2017 on the file of the Judicial Magistrate No.II, Karur, dated 06.10.2017 and allow the set aside petition consequently direct the Judicial Magistrate No.II, Karur to give interim custody of the petitioner's lorries bearing registration No.TN-28-AC-7591.

For Petitioner : Mr.S.Gokul Raj
For Respondent : Mr.K.S.Durai Pandian
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to set aside the order passed by the learned Principal Sessions Judge, Karur in Crl.R.C.No.36 of 2017 dated 13.10.2017 confirming the dismissal order passed by the learned Judicial Magistrate No.II, Karur in Crl.M.P.No.5834 of 2017 dated 06.10.2017.

2.The petitioner states that he is the owner of the vehicle, bearing Registration No.TN-28-AC-7591. It appears that the respondent police has registered a case in Crime No.390 of 2017 for the alleged offence under Section 379 IPC r/w Section 21(1) a, b of Mines and Minerals (Developments and Regulations) Act, 1957 in connection with the occurrence taken place on 01.10.2017. Though the petitioner has not been arrayed as an accused, it is further stated that the vehicle was involved in illegal transportation of sand. Since the lorry of the petitioner was



seized by the respondent police, the petitioner filed a petition in CrI.M.P.No.5834 of 2017 under Section 451 of Cr.P.C for return of vehicle before the learned Judicial Magistrate No.II Karur. But the same was dismissed by the learned Judicial Magistrate No.II Karur, by an order dated 06.10.2017. As against the order of dismissal for return of vehicle, the petitioner has preferred Criminal Revision in CrI.R.C.No.36 of 2017 before the learned Principal Sessions Judge, Karur and the same was also dismissed by an order dated 13.10.2017. Aggrieved by the order of the learned Principal Sessions Judge, Karur, in CrI.R.C.No.36 of 2017, the above Criminal Original Petition has been filed.

3.In the order, the learned Principal Sessions Judge, Karur, has stated that the vehicle is likely to be confiscated once again for committing the same offence and that therefore, in view of the objection of learned Additional Public Prosecutor, the revision is liable to be dismissed by making an observation that Truck owners are in the habit of defying the Court orders and the orders of State Government by indulging in commission of illegal sand mining. No antecedent or previous record or material is relied upon by Court for making this observation. Hence the order is unsustainable in law.

4.The learned counsel for the petitioner relied upon the Judgement of a learned Single Judge of this Court in the case of **Sakthidevi Vs. State by the Inspector of Police, Thittachery Police Station, Nagapattinam District** reported in **(2011) 4 MLJ (CrI) 634** wherein, certain guidelines are framed for interim custody of vehicles in similar cases following the Judgment of a Division Bench of this Court. Paragraphs 9 to 11 in the Judgment are extracted below for the convenience.

9.It is seen that the said Judgment of this Court is also circulated to the Subordinate Courts in the State of Tamil Nadu. The above guidelines stipulated by the Division Bench would make it crystal clear that the Courts below shall pass any order under Section 451 or 457 Cr.P.C., by exercising its power and discretion judiciously. It is also made clear in the said guidelines that the spirit of Section 14(4) of TNP Act should also be taken into consideration while passing an order granting the relief of interim custody of vehicle. Apart from such guidelines, it is also stipulated that the owner of the vehicle shall give an undertaking to produce the vehicle as and when required by the District Collector/Prohibition Officer in-charge of the District or authorized officer in that behalf by the Government. Therefore, is very clear that even the Division Bench has not given a finding to the effect that the pending confiscation proceedings is a ground for granting the relief of interim custody of the vehicle. It is also relevant to state that the Magistrate



Court is not prevented from making any order of interim custody as per the provision under Section 451 Cr.P.C., merely because the vehicle was not produced before the said Court. As it is held by the Hon'ble Apex Court in the decision cited supra that the production of the vehicle is not necessary for passing the order of interim custody of the vehicle.

10. In view of the aforesaid reasons, this Court is constrained to set aside the order passed by the learned Judicial Magistrate No.2, Nagapattinam made in Crl.M.P.No.472 of 2011 dated 08.02.2011 and the criminal revision is allowed.

11. The learned Judicial Magistrate No.2, Nagapattinam is directed to return the vehicle, viz., Tata Sumo Car bearing Registration No.TN-51-P-2826 on the following conditions:

(i) The petitioner shall produce the original RC Book and other relevant records to prove his ownership and the learned Magistrate, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the revision petitioner with a view to use the vehicle;

(ii) The petitioner shall not alienate the vehicle in any manner till adjudication is over.

(iii) The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the satisfaction of the learned Judicial Magistrate No.2, Nagapattinam;

(iv) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the Court below and as well as by the District Collector of the District or authorised officer in that behalf by the Government.

5. As a result, the order passed by the learned Principal Sessions Judge, Karur, in Crl.R.C.No.36 of 2017 dated 13.10.2017 is set aside and the learned Judicial Magistrate No.II, Karur is directed to return the vehicle of the petitioner bearing Reg.No.TN-28-AC 7591 on the following conditions:

(i) The petitioner shall produce the original RC Book and other relevant records to prove his ownership and the learned Magistrate, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the revision petitioner with a view to use the vehicle;



(ii) The petitioner shall not alienate the vehicle in any manner till adjudication is over.

(iii) The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the satisfaction of the learned Judicial Magistrate No.II, Karur;

(iv) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the Court below and as well as by the District Collector of the District or authorised officer in that behalf by the Government.

6. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Karur.
2. The Judicial Magistrate No.II,
Karur.
3. The Sub-Inspector of Police,
Velayuthampalayam Police Station,
Karur.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.GOKULRAJ, ADVOCATE IN SR No. 88676

SSS

TE/MR-KKR/SAR-1 : 27/11/2017 : 4P/6C

Cr1.O.P. (MD) .No.15526 of 2017
21.11.2017