



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Crl.O.P.(MD).No.16192 of 2017

B.Kavitha ... Petitioner/Petitioner / Petitioner

Vs.

The Inspector of Police,
Aravakuruchi Police Station,
Karur District.

Crime No.404 of 2017 ...Respondent/Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to set aside the order in Crl.R.C.No.35 of 2017 dated 13.10.2017 on the file of the learned Principal Sessions Judge, Karur confirmed the order passed in Crl.M.P.No.5733 of 2017, dated 28.09.2017 on the file of the learned Judicial Magistrate No.II, Karur and consequently direct the learned Judicial Magistrate No.II, Karur to hand over the petitioner's lorry bearing Registration No.TN-41-AM-8077 to the petitioner.

For Petitioner : Mr.R.Mathiyalagan

For Respondent : Mr.K.S.Durai Pandiyan,
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition is filed to set aside the order in Crl.R.C.No.35 of 2017 dated 13.10.2017 on the file of the learned Principal Sessions Judge, Karur confirmed the order passed in Crl.M.P.No.5733 of 2017, dated 28.09.2017 on the file of the learned Judicial Magistrate No.II, Karur and consequently direct the learned Judicial Magistrate No.II, Karur to hand over the petitioner's lorry bearing Registration No.TN-41-AM-8077 to the petitioner.

2.The petitioner states that she is the owner of the vehicle, (Lorry) bearing Registration No.TN-41-AM-8077. It appears that the respondent police has registered a case in Crime No.404 of 2017 for the alleged offence under Section 379 I.P.C., r/w Section 21 (1) (a) (b) of Mines and Minerals (Development and Regulation)



Act, 1957 in connection with the occurrence taken place on 17.09.2017. Though the petitioner has not been arrayed as an accused, it is further stated that her vehicle was involved in illegal transportation of sand from Amaravathi River bed. Since the petitioner's lorry was seized by the respondent police, the petitioner filed a petition in CrI.M.P.No.5733 of 2017 under Section 451 Cr.P.C., for returning 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 28.09.2017. As against the order of dismissal for returning of vehicle, the petitioner has preferred Criminal Revision in CrI.R.C.No.35 of 2017 before the learned Sessions Judge, Karur and the same was also dismissed by an order dated 13.10.2017. Aggrieved by the order of the learned Sessions Judge, Karur, in CrI.R.C.No.35 of 2017, the above Criminal Original Petition has been filed.

3.In the order, the learned 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. The general observation is unwarranted and no material is produced to show that the vehicle is involved in similar offence. Hence, the order is liable to be set aside.

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 the Division Bench of this Court. Paragraphs 9 to 11 of the Judgment are extracted below for 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 bar 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 CrI.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:

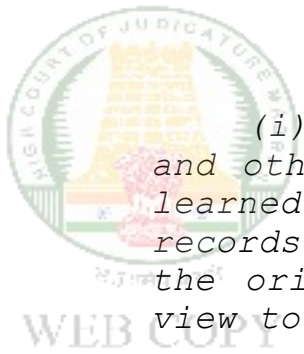
(i) The petitioner shall produce the original RC Book and other relevant records to prove his ownership and the learned Magistrate, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the revision petitioner with a view to use the 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 Sessions Judge, Karur, in CrI.R.C.No.35 of 2017 dated 13.10.2017 is set aside and the learned Judicial Magistrate No.II, Karur is directed to return the vehicle to the petitioner bearing Registration No.TN 41-AM-8077 on the following conditions:



(i) The petitioner shall produce the original RC Book and other relevant records to prove her 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 she 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, the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

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

+ 1 cc TO Mr.R.Mathiyalagan , Advocate in SR No. 89409

cmr

AE/KP/SAR4/05.12.2017/4P/7C

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