



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.162 of 2017

Orders Reserved on 15.03.2017

T.Mahendran : Petitioner

Vs.

State Rep.by  
The Inspector of Police,  
Sattur Taluk Police Station,  
Virudhunagar District.  
(Crime No.22 of 2017)

: 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.539 of 2017, dated 08.02.2017 and to set aside the same and further direct the learned Judicial Magistrate No.II, Sattur to grant interim custody of the vehicle viz., TATA 407 Tipper Lorry, bearing Registration No.TN-67-AR-1953 to the petitioner.

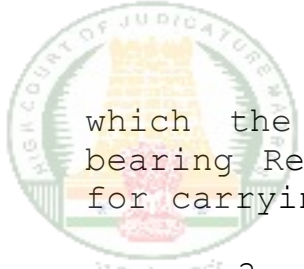
For Petitioner :Mr.P.Saravana Kumar

For Respondent :Mr.P.Kandasamy  
Government Advocate(Cr1. Side)  
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### 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.539 of 2017, dated 08.02.2017 and further direct the learned Judicial Magistrate No.II, Sattur, to grant interim custody of the vehicle viz., TATA 407 Tipper Lorry, bearing Registration No.TN-67-AR-1953 to the petitioner.

2. A case has been registered in Crime No.22 of 2017, for the offence under Section 379 IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957, on 20.01.2017, in



which the petitioner's vehicle viz., TATA 407 Tipper Lorry, bearing Registration No.TN-67-AR-1953, which was said to be used for carrying one unit of sand illegally.

3. The respondent has admitted in his counter that the petitioner is the owner of the seized vehicle and it was produced before the learned Judicial Magistrate No.II, Sattur and was remanded in P.R.No.38 of 2017. It is further admitted that the Revenue Divisional Officer, Sattur, initiated proceedings fixing the fine amount of Rs.25,220/- against the petitioner, by issuing show-cause notice and confiscation proceedings initiated by the Revenue Divisional Officer, Sattur is pending.

4. The petitioner herein moved Crl.M.P.No.539 of 2017, before the learned Judicial Magistrate No.II, Sattur, under Section 451 Cr.P.C., seeking a direction to return the vehicle, which is said to be used in the crime and the said petition was dismissed by the learned Judicial Magistrate No.II, Sattur, after hearing the parties, vide in its order dated 08.02.2017. Aggrieved by the same, the petitioner herein has filed this Criminal Revision Case for release of the vehicle in question.

5. The learned counsel appearing for the petitioner would submit that the petitioner is the owner of the seized vehicle and it 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 said proceedings 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 a Judgment of this Court made in CRL. RC(MD)No.394 of 2016, dated 21.06.2016 and also in Crl.R.C.(MD)No.688 of 2016, dated 11.11.2016.

6. 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 was placed before the learned Judicial Magistrate No.II, Sattur.

7. Perused the impugned order of dismissal and the materials on records and also heard the rival submissions made by



8. Admittedly, there is no rival claim in respect of the seized vehicle in this case. There is no dispute that the petitioner is the owner of the seized vehicle. 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 this case, which is pending for investigation. This Court also considers the Judgment of the Hon'ble Apex Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in (2003 (1) CTC 175) and also the Judgment of this Court reported in (2009 (1) MLJ (Cr1.) 852) between **Gajendran and State through Inspector of Police, Civil Supplies CID, Madurai**, which are squarely applicable in the case on hand.

9. Considering the above, ordered as under:-

i. The Criminal Revision is allowed by setting aside the order, dated 08.02.2017, passed in Cr.M.P.No.539 of 2017, by the learned Judicial Magistrate No.II, Sattur.

ii. The learned Judicial Magistrate No.2, Sattur, will give the interim custody of vehicle viz., TATA 407 Tipper Lorry, bearing Registration No.TN67-AR-1953, 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 (CS-III)

/True copy/



To

1.The Judicial Magistrate No.2,  
Sattur.

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

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

+1 CC to M/s.P.KALAIYARASI BHARATHI, Advocate, SR No. 14941  
MPK

PSM/MMS/18.05.2017/4P/5C

Order made in  
**Cr1.RC(MD)No.162 of 2017**  
**Dated:-11.05.2017**