



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2017

(Orders Reserved on 24.10.2017)

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CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.R.C.(MD)No.224 of 2017

S.K.Jeyaraj : Revision Petitioner
Vs.

1. The Sub Inspector of Police,
Sethur Police Station,
Rajapalayam

2. Dhanasekaran : Respondents
(R2 impleaded vide order
dated 29.06.2017)

PRAYER: Revision is filed under Section 451 of Cr.P.C., praying to call for the records relating to the orders passed by the learned Judicial Magistrate Court, Rajapalayam in Cr.M.P.No.9308(a)/2016 in C.C.No.451 of 2016, dated 11.11.2016 and to set aside the same and allow the Revision Petition.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondent-1 : Mr.T.Mohan
Additional Public Prosecutor
For Respondent-2 : Mr.A.Arivuchandran

O R D E R

This Criminal Revision Petition has been filed praying to call for the records relating to the orders passed by the learned Judicial Magistrate, Rajapalayam in Cr.M.P.No.9308(a)/2016 in C.C.No.451 of 2016, dated 11.11.2016 and to set aside the same.

2. The Criminal Revision is taken up for final hearing, in the admission stage itself, with the consent of the counsel appearing for either side.

3. The petitioner herein is the financier of the seized vehicle viz., JCB, bearing Registration No.TN-72-AZ-0085. The first respondent registered the FIR under Section 379 of IPC., and also under Section 21(4) of Mines and Minerals Development Act and final report was also filed and is pending as C.C.No.451 of 2016



on the file of the learned Judicial Magistrate Court, Rajapalayam. The seized JCB vehicle is said to be used in quarrying the sand illegally, which was remanded in P.R.No.407 of 2016, before the learned Judicial Magistrate, Rajapalayam and is now in the custody of the respondent Police, as per the order of the Court.

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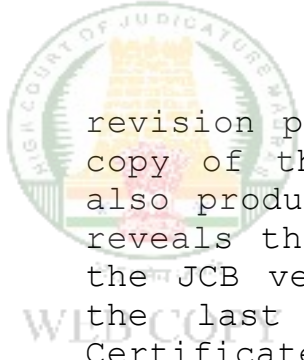
4. The 2nd respondent is the owner of the vehicle in whose name the Certificate of Registration of the seized vehicle stands, added as party to the Revision, on application filed by the revision petitioner before this Court. The petitioner filed Cr.M.P.No.9308(a) of 2016, before the learned Judicial Magistrate, Rajapalayam, seeking interim custody of the vehicle bearing Registration No.TN-72-AZ-0085 (JCB Vehicle) and it was dismissed by the Court below stating that the said vehicle was used for theft of sand and a letter was also addressed to the Revenue Division Officer, Sattur, for initiating confiscation proceedings and is pending and the 2nd respondent is the owner of the said vehicle, as per the order dated 07.11.2016. Aggrieved by that order, the present Revision Petition is filed by the petitioner to set aside the said order.

5. The learned counsel appearing for the petitioner would submit that the revision petitioner is entitled for interim custody of the JCB vehicle, bearing Registration No.TN-72-AZ-0085, being the financier of the vehicle and the petitioner is entitled to the custody of the said vehicle even during the pendency of the confiscation proceedings and if the vehicle is being kept in the Police Station its utility will be affected and as such, the petitioner is entitled for return of the vehicle. The learned counsel in support of his contention, has relied on the Judgment of the Apex Court in **Sundarbhai Ambalal Desai Vs. State of Gujarat** reported in (2003 (1) CTC 175); and also the Judgment in **Bharath Metha vs State By Inspector Of Police, Chennai** reported in 2008 (2) MLJ (Cr1.) 631 SC and also the decision of this Court in CrI.R.C.(MD)No.688 of 2016, dated 11.11.2016 in Mahendran Vs. State Represented by Inspector of Police, Sattur Town Police Station, Sattur, Virudhunagar District (Crime No.535 of 2016).

6. The learned Additional Public Prosecutor appearing for the first respondent and also the counsel for 2nd have not chosen to file counter or raise any objections orally or in written regarding the relief sought for in this Revision.

7. I have Perused the materials available on record and also heard the submissions made by either side.

8. Admittedly, the 2nd respondent herein is the owner of the JCB vehicle, bearing Registration No.TN-72-AZ-0085 and the Certificate of Registration of the said vehicle stands in his name. It is not denied or disputed by the 2nd respondent that the



revision petitioner is the financier of the said vehicle. Xerox copy of the Certificate of Registration of the said vehicle is also produced by the petitioner for perusal of this Court, which reveals the fact that the 2nd respondent is shown as the owner of the JCB vehicle, bearing Registration No.TN-72-AZ-0085. As per the last endorsement, dated 31.08.2016, found in the said Certificate, the vehicle is under the hypothecation with the petitioner finance with effect from 31.08.2016, after cancelling the hypothecation endorsement with 'Sakthi Finance', Coimbatore, with effect from 02.07.2016. The 2nd respondent has not chosen to claim the interim custody of the vehicle in question, but he supports the claim of the petitioner herein.

9. The said JCB vehicle is said to be involved in criminal case of theft of sand was seized by the respondent and thereafter, the said vehicle is in the custody of the respondent Police. It cannot be denied that, if the vehicle is kept in the Police Station and it is of no use to keep such seized vehicle at the Police Station for a long period. If the seized vehicle has been kept in idle and they are being kept in open sky and ultimately, it will become a scrap value. There is no bar for interim custody of the seized vehicle, if any proceedings initiated by the Revenue Divisional Officer, Sattur, for confiscation and the petitioner will challenge the same before the competent Authority, if any adverse order is passed in the said confiscation proceedings. No record is produced to show that the confiscation proceedings are initiated against the said vehicle and is pending.

10. Considering the above facts and circumstances, this Court is inclined to order as under.

(i) The Criminal Revision is allowed by setting aside the order dated 11.11.2016 passed in Cr.M.P.No.9308(a) of 2016 by the learned Judicial Magistrate, Rajapalayam.

(ii) The learned Judicial Magistrate, Rajapalayam is directed to give interim custody of the vehicle viz., the JCB bearing Registration No.TN-72-AZ-0085, to the petitioner on his execution of a bond for Rs.3,00,000/- (Rupees three lakhs only) to the satisfaction of the learned Judicial Magistrate and also on production of authenticated copy of original R.C. Book by the revision petitioner herein.

(iii) The interim custody of the vehicle is subject to the confiscation proceedings, if any, by the Revenue Divisional Officer, Sattur.

(iv) The said vehicle shall be photographed in different angles, at the cost of the petitioner herein and to be kept in the case records.

<https://hcservices.ecourts.gov.in/Prsnpices> Panchanama is to be prepared before handing over the possession of the vehicle.



(vi) Until final property order is passed by the said Judicial Magistrate or confiscation authority, the revision petitioner shall not dispose of or alter or change the vehicle and
(vii) The revision petitioner shall cause the production of the vehicle, as and when ordered by the Judicial Magistrate concerned.

Sd/-
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Rajapalayam.
2. The Sub Inspector of Police,
Sethur Police Station,
Rajapalayam
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1cc to Mr.P.Ganapathi Subramanian, Advocate Sr.No.87165

MPK

VB/SKN/RSK/SAR2/24/11/2017/4P/6C

Order made in
Cr1.RC(MD)No.224 of 2017
10.11.2017