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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2017

(Orders Reserved on 27.04.2017)

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)Nos.324 & 374 of 2017

Chellasamy ... Petitioner in Crl.RC.(MD)No.324/2017

Kadarkaraivelu ... Petitioner in Crl.RC.(MD)No.374/2017

Vs.

1.State Rep. By
The Inspector of Police,
Keezharajakularaman Police Station,
Virudhunagar District
(Crime No.46/2016)

2.Kaliappan

3.Karuthapandi

4.Murugan ... Respondents/Complainant/Accused

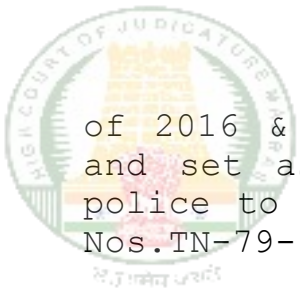
PRAYER: Revisions are filed under Section 397 r/w 401 of Cr.P.C., praying to call for the entire records relating to the impugned order of the learned Judicial Magistrate, Rajapalayam passed in Crl.M.P.No.1691 of 2016 & Crl.M.P.No.1690 of 2016, respectively dated 22.03.2016 set aside the same and consequently, direct the respondent police to hand over the petitioner's vehicle bearing Registration Nos.TN-79-6865 & TN-76-Z-8728 respectively and allow the Revision Petitions.

For Petitioner : Mr.R.J.Karthick
(In both Crl.RCs.)

For Respondent : Mr.P.Kannithevan
(In both Crl.RCs.) Govt.Advocate (crl.side)

COMMON ORDER

<https://hcservices.ecourts.gov.in/hcservices> This Criminal Revision Petitions have been filed praying to call for the entire records relating to the impugned order of the learned Judicial Magistrate, Rajapalayam passed in Crl.M.P.No.1691



of 2016 & Crl.M.P.No.1690 of 2016, respectively dated 22.03.2016 and set aside the same and consequently, direct the respondent police to hand over the petitioner's vehicle bearing Registration Nos.TN-79-6865 & TN-76-Z-8728 respectively.

2. The 1st respondent herein registered an FIR in Crime No. 46 of 2017, for the offences under Section 379 of IPC., and Section 4(1-A) r/w. 21(1) of Mines and Minerals Development Act, dated 10.02.2016, against the Respondents 2 to 4, by seizing the Tractor, bearing Registration No.TN-79-6865 along with a Trailer having no Registration Number, driven by the 2nd accused with half unit of river sand and another Tractor, bearing Registration No.TN-76-Z-6822 along with a Trailer having no Registration Number, driven by the 3rd respondent, with half unit of river sand and also seized a JCB found in the river and the said vehicles were said to be used for quarrying and transporting the river sand illegally. The 4th Respondent is said to be the owner of the said Tractors and Trailers and the driver of the said JCB. The seized vehicles and trailers, which were not bearing Registration Numbers, were produced before the learned Judicial Magistrate, Rajapalayam and were remanded in R.P.R.No.465 of 2016, dated 07.11.2016 and the said Tractors along with Trailers were handed over to the Revenue Divisional Officer, Sivakasi, for further action. Final report was also laid and was taken on file in C.C.No.41 of 2017, dated 04.02.2017 and pending for trial, on the file of the learned Judicial Magistrate, Rajapalayam. Witness summons were also issued to L.W.Nos.1 to 3. While the said case is pending for commencement of trial, the Revision Petitioner in Crl.RC(MD)No.374 of 2017 filed Crl.M.P.No.1690 of 2016, claiming ownership of the Trailer, bearing Registration No.TN-76-Z-8728, which seized in this case and also seeking the relief of interim custody under Sections 451 and 457 of Cr.P.C., from the trial Court.

3. The Revision Petitioner in Crl.RC(MD)No.324 of 2017 filed Crl.M.P.No.1691 of 2016 claiming ownerships upon the Tractor bearing Registration No.TN-79-6865 seized in this case and seeking interim custody under Sections 451 and 457 of Cr.P.C., from that Court. Both the applications were heard and dismissed on 22.03.2016, considering the objections raised by the respondent before the learned Judicial Magistrate, Rajapalayam.

4. Aggrieved by the order of the dismissal, the present Revision Petitions in Crl.RC(MD)Nos.324 & 374 of 2017 have been filed assailing the correctness, illegality and findings of the learned Judicial Magistrate, Rajapalayam, before this Court.

5. The Respondent Nos.2 to 4 have not chosen to file any Revisions, though they entered appearance through their counsels. The first respondent / State alone filed written objections before this Court.



6. I have perused the materials available on records. Heard and considered the rival submissions made by both sides.

7. The Petitioner, who is claiming interim custody of the vehicle in question, are not the accused in Crime No.46 of 2016 registered by the 1st respondent. Accused in the criminal case have not placed any rival claim or ownerships upon the seized vehicles and trailers. It is admitted by the first respondent in his counter that the seized vehicles and trailers were produced along with the accused before the learned Judicial Magistrate, Rajapalayam and the seized vehicles and trailers were remanded in R.P.R.No.465 of 2016, dated 07.11.2016, by the learned Judicial Magistrate, Rajapalayam. It is further stated that the Tractors and Trailers were subsequently handed over to the Revenue Divisional Officer, for further action, since the case has been registered under Section 379 of IPC., and Section 4(1)(A) of Mines and Minerals Development Act, 1957. Final Report is also laid and is pending as C.C.No.4 of 2017 on the file of the learned Judicial Magistrate, Rajapalayam and the trial was commenced by issuing summons. The trial Court dismissed the petitions filed by the Revision Petitioner stating that the confiscation proceedings are initiated by the Revenue Divisional Officer, Sivakasi.

8. The learned counsel appearing for the Revision Petitioner would submit that the lower Court is bound to pass orders under Sections 451 and 457 of Cr.P.C., considering the dictum laid down by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai Vs. State of Gujarat reported in [AIR 2003 SC 638].

9. Admittedly, no documents were produced by the first respondent to show that the Revenue Officials were initiated confiscation proceedings under Mines and Minerals Act. The Revision Petitioner has stated that no Notice have been issued from the Office of the Revenue Divisional Officer, Sivakasi even though the vehicles have been seized on 10.02.2016 by the 1st respondent Police. The 1st respondent has contended before the trial Court that the 1st respondent sent the intimation to the Revenue Divisional Officer, Sivakasi, in respect of the seizure of the vehicles, for taking confiscation proceedings and the said intimation is also pending.

10. On perusal of the FIR No.46 of 2016, dated 10.02.2016, would reveal the fact that on the date of occurrence, the Tractor, bearing Registration No.TN-79-6865 along with the Trailor having no Registration Number, was driven by the accused viz., Kaliappan and TN-76-Z-6322 along with Trailer having no Registration Number was driven by the accused viz., Karuthapandi, and the vehicles were loaded with half unit of river sand each and on enquiry, one Murugesan S/o.Chellasami is the owner of the said Tractors along with Trailers and JCB, who is arrayed as A3 in the



said FIR. The said Murugesan has not chosen to file any objection for return of the above vehicles before the trial Court or before this Court.

11. The Revision Petitioner in CrI.R.C.No.324 of 2017 has stated that the said Murugesan / A3 is his son and claimed ownerships over the seized Tractor, bearing Registration Nos.TN-79-6865 alone and the petitioner in CrI.R.C.(MD)No.374 of 2017 has stated that the said Murugesan / A3 is his friend and claiming ownerships over the trailer having no Registration Number by stating Registration Number as TN-76-Z-8728, which is not stated in the FIR. The petitioner in CrI.R.C.No.324 of 2017 has not chosen to file any documents in respect of the seized Tractor bearing Registration Nos.TN-79-6865, before this Court also. The Petitioner in CrI.R.C.No.374 of 2017 has filed Xerox copy of Registration Certificate issued in his name in respect of LMV Trailer, bearing Registration No.TN-76-Z-8728, issued on 07.12.2005 signed by the Assistant Registering Authority, Sankarankovil. The respondent has contended that the chassis number of trailer seized in this case as ASI 200 X S, which does not tally with the documents produced by the petitioner in CrI.R.C.NO.374 of 2017 before this Court in which, the chassis number is stated as 036/2005. The Trial Court has not considered the ownerships claimed by the petitioner herein in respect of the seized Tractor and Trailers having no registration number with relevant records.

12. The trial Court has dismissed the petitions filed by the Revision Petitioner only on the ground relying the objections raised by the respondent Police that requisition letter was given to the Revenue Divisional Officer, Sivakasi, for initiating confiscation proceedings against the seized Tractors and Trailers, since they had been used for illegal transporting of river sand and is pending under the Mines and Minerals Development Act.

13. Admittedly, no notice was issued or served by the competent authority so far in the said proceedings is concerned. No record is also produced before this Court by the respondent Police to substantiate its arguments. There is no bar to decide the issue of ownerships, as claimed by the revision petitioner herein, by the trial Court itself, though the alleged confiscation proceedings are pending before the competent authority. In the above said facts and circumstances of the case, this Court is inclined to allow these Revisions

14. In the result, the Criminal Revision Petitions are allowed by setting aside passed in CrI.M.P.No.1691 of 2016 & CrI.M.P.No.1690 of 2016, respectively dated 22.03.2016, by the District Magistrate, Rajapalayam. The trial Court is directed to decide the issue of ownerships of the petitioner upon his seized vehicles viz., Tractors and Trailers afresh, after



giving sufficient opportunity to the petitioner herein, on the basis of the records of ownerships, on merits and in accordance with law.

Sd/-

Assistant Registrar(P&A)

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/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate,
Rajapalayam.
- 2.The Inspector of Police,
Keezharajakularaman Police Station,
Virudhunagar District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2cc to M/S.R.J.Karthick, Advocate SR.No. 76859

Order made in
Cr1.RC(MD)Nos.324 & 374 of 2017

Dated:-
06.09.2017

MPK

JM/SKN RSK/SAR 2/07.09.2017/5P/6C