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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED**

Cr1.RC(MD)No.432 of 2017

[Orders Reserved on 09.06.2017]

Murugan : Petitioner/Petitioner/  
Owner of the vehicle/A3

**Vs.**

1.State rep. by  
The Inspector of Police,  
Keezharajakularaman Police Station,  
Virudhunagar District  
Crime No.46 of 2016 : Respondent/Respondent  
Complainant

2.Kaliappan  
3.Karuthapandi : Accused

**Prayer:** Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to the impugned order of the learned Judicial Magistrate, Rajapalayam passed in Cr1.M.P.No.1692 of 2016, dated 22.03.2016 set aside the same and consequently direct the respondent police to hand over the petitioner's vehicle bearing Registration No.TN76-Z-6822 and trailer Number : TN.67-S-1238 and allow this Revision Petition.

For Petitioner : Mr.R.J.Karthick

For Respondent-1 : Mr.C.Mayilvahana Rajendran, APP

**O R D E R**

This Criminal Revision has been filed praying to call for the records relating to the impugned order of the learned Judicial Magistrate, Rajapalayam passed in Cr1.M.P.No.1692 of 2016, dated 22.03.2016 set aside the same and consequently, direct the respondent police to hand over the petitioner's vehicle, bearing Registration No.TN76-Z-6822 and trailer Number: TN.67-S-1238.



2. This matter is taken up for final disposal at the admission stage itself with the consent of the learned counsels appearing for both sides.

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3. The petitioner herein is arrayed as A3 in FIR No.46 of 2016, dated 10.12.2016 registered by the respondent Police against the petitioner and 2 other named accused, for the offences punishable under Section 379 of IPC., and Section 4 (1-A) r/w. 21(1) of Mines and Minerals Development Regulation Act, for illegal quarrying and transporting each half unit of river sand by using the tractor bearing Registration No.TN-79-6865 along with a trailer having no registration Number driven by A2 / 2<sup>nd</sup> respondent herein and a tractor bearing Registration No.TN-76-Z-6322 along with a trailer having no registration number driven by A2 / 3<sup>rd</sup> respondent herein and the accused fled away from the scene of occurrence, on seeing the police party. As per the FIR, the petitioner is not found in the scene of occurrence place and he is alleged to have been the owner of the two tractors. The two tractors each having a trailer without registration numbers were seized by the respondent police.

4. The petitioner filed Cr.M.P.No.1692 of 2016 before the learned Judicial Magistrate, Rajapalayam, seeking interim custody of his Tractor bearing Registration No.TN-76-Z-6872 and the trailer bearing Registration No.TN-67-S-1238 attached with another tractor, which are said to be used for the commission of offence during inquiry and the said petition was heard and dismissed on 22.03.2016 by the learned Judicial Magistrate, Rajapalayam stating that the said vehicles involved in the theft cases and letter was also addressed to the Revenue Divisional Officer, Sivakasi, for initiating proceedings and the same is pending and also the said vehicles were seized in the place of quarrying sand illegally and hence, the petition is liable to be dismissed. Aggrieved by that order of dismissal, the petitioner preferred the present Criminal Revision for the aforesaid relief.

5. The learned counsel appearing for the petitioner contends that the respondent has not produced any documents to show that the Revenue Officials have intimated the proceedings under the Mines and Minerals Act and no Notice has been received by the petitioner from the office of the Revenue Divisional Office, Sivakasi, though the vehicle has been seized on 10.02.2016 and the Court below has not followed the dictum laid down by the Hon'ble Apex Court in **Sunderbhai Ambalal Desai Vs. State Of Gujarat** reported in **(2002 Supp (3) SCR 39)** for return of vehicle on interim custody and hence, the impugned order is liable to be set aside.

6. The learned Additional Public Prosecutor appearing for the respondent would submit on instructions and also filing a copy of Memorandum in Na.Ka.A2/1969/2017, dated 07.06.2017 of the Revenue



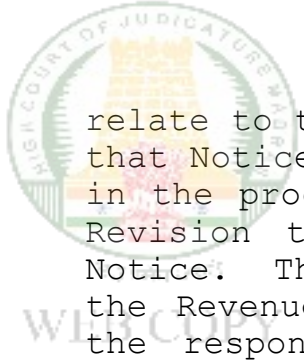
Divisional Officer, Sattur, initiating revenue recovery proceedings against the petitioner in respect of the tractor bearing Registration No.TN-79-6865; that the petitioner is not entitled to get interim custody of the vehicle, since the revenue recovery proceedings are initiated and is pending against the petitioner in respect of the vehicle used for sand theft and hence, this Revision is liable to be dismissed.

7. The learned counsel appearing for the petitioner filed the Xerox copy of the Registration Certificate of the tractor, bearing Registration No.TN-76-Z-6822 and also the Registration Certificate of the Trailer bearing Registration No.TN-67-S-1238 and also the copy of the FIR registered in this case and the petition copy of CrI.M.P.No.1692 of 2016 and the objections filed by the respondent before the Court below and also the impugned order dated 22.03.2016.

8. Perused the materials on record. Heard and considered the rival submissions made by either parties.

9. Admittedly, the tractor along with trailer were seized by the respondent police in the place of occurrence for quarrying and loading illegally half unit of sand each. As per the FIR, the seized trailer are not having any registration number. However, it is admitted in the FIR and also in the proceedings before the Court below that the seized Tractors and trailers belonged to the petitioner herein. The petitioner filed Cr.M.P.No.1692 of 2016 under Sections 451 & 457 of Cr.P.C., for interim custody of his vehicles that is the tractor bearing Registration No.TN-76-Z-6872 and the trailer bearing Registration No.TN-67-S-1238. The petitioner claims that he is the owner of the said tractor and trailer by producing the xerox copy of the Registration Certificate in respect of the tractor and trailer respectively. But the seized trailers are not having any registration numbers, as per the FIR allegation. The petitioner claims over the seized Tractor bearing Registration No.TN-76-Z-6872 and the trailer bearing no Registration Number as owner, is not disputed in the proceedings before the Court below and also in the impugned order and there is no rival claim in respect of the said vehicles even by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein.

10. According to the petitioner, he has not received any notice sofar from the Revenue Authorities in respect of the confiscation proceedings. It is further submitted that there is no bar for interim custody of the seized vehicles and the Revision Petitioner would participate in the proceedings initiated by the Revenue Divisional Officer, Sattur, and the petitioner would challenge the same before the competent authority, if any adverse order is passed in the confiscation proceedings and the seized vehicle has been kept ideal and they are being kept in open sky and ultimately it will become a scarab value. The alleged Memorandum filed by the respondent during hearing of the revision does not



relate to the vehicle in issue. Further, the respondent has stated that Notice was issued by the Revenue Divisional Officer, Sivakasi, in the proceedings before the Court below, but it is stated in the Revision that the Revenue Divisional Officer, Sattur has issued Notice. The impugned order also reflects about the Notice issued by the Revenue Divisional Officer, Sivakasi. The Notice produced by the respondent in this Revision relates to the Tractor bearing Registration No.TN-79-6865.

11. Considering the above facts and circumstances of the case and the ownership of the petitioner over the seized tractor bearing registration number and the trailer having no registration number is admitted in this case, this Court is inclined to allow the Criminal Revision.

12. In the result, the Criminal Revision Petition stands allowed and the impugned order, dated 22.03.2016, passed in Cr.M.P.No.1692 of 2016, by the learned Judicial Magistrate, Rajapalayam, is set aside and the interim custody of the tractor and trailer in issue is ordered on the following terms:-

i. The learned Judicial Magistrate, Rajapalayam, shall give interim custody of the Tractor bearing Registration No.TN-76-Z-6872 and the trailer which is not having registration number, but the petitioner states that its Registration No is, TN-67-S-1238, after verifying the details found in the certificate of registration with seized tractor and trailer, which has no registration number.

ii. The Revision Petitioner shall execute a personal bond for Rs.3,00,000/- (Rupee Three Lakhs Only) to the satisfaction of the said Magistrate. The property documents or solvent certificate from the Tahsildhar should not be insisted

iii. Photographs should be taken in different angle and panchanama also be prepared with the signature of the petitioner herein in respect of the vehicle in issue, at the cost of the petitioner and to be kept in the case records.

iv. It is made clear that this interim custody is subject to the proceedings initiated, if any, before the Confiscation Authority / Revenue Authorities.

v. Until final property order is passed by the said Magistrate or by the Authority before whom confiscation proceedings are pending, as contended by the respondent, the Revision Petitioner shall not dispose of / alter or change the vehicle.

vi. The Revision Petitioner shall cause the production of tractor and trailer as and when so ordered by the said Magistrate.

<https://hcservices.ecourts.gov.in/hcservices/>

vii. Authenticated xerox copy of the original registration



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certificate of the tractor and trailer are to be received after verifying the originals and kept along with the case records.

Sd/-

Assistant Registrar (AD-II)

/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.
4. The Record Keeper,  
Vernacular Section  
Madurai Bench of Madras High Court,  
Madurai.

+ 1 CC TO Mr.R.J.KARTHICK, ADVOCATE IN SR No. 81726

MPK

TE/MR-KKR/SAR-IV : 24/10/2017 : 5P/6C

Orders made in  
Crl.RC(MD)No.432 of 2017  
Dated:- 05.10.2017