



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.773 of 2017

[Orders Reserved on 10.10.2017]

Nagalingam : Petitioner / Petitioner
Vs.

The Inspector of Police,
Nazareth Police Station,
Thoothukudi District
(Crime No.165 of 2017) : Respondent / Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order passed by the Judicial Magistrate, Sathankulam, dated 21.09.2017 in Crl.M.P.No.7911 of 2017 and allow the petition.

For Petitioner : Mrs.Lakshmi Gopinathan
For M/s.Polax Legal Solutions

For Respondent : Mr.T.Mohan
Addl.Public Prosecutor

O R D E R

This Criminal Revision Case has been filed against the order passed by the learned Judicial Magistrate, Sathankulam, dated 21.09.2017 in Crl.M.P.No.7911 of 2017.

2. The matter is taken up for final disposal at the admission stage itself with the consent of the learned counsels appearing for the respective parties.

3. Admittedly, an FIR has been registered in Crime No.165 of 2007, dated 02.08.2017, by the respondent Police under Section 379 of IPC., and Section 21(1) & 21(5) of Mines and Minerals (Development and Regulation) Act, 1957, on the basis of the complaint of the Sub-Inspector of Police, Nazareth Police Station, Thoothukudi District, against the accused viz., Easkimuthu and the Ashok Leyland Tipper Lorry, bearing Registration No.TN-69-U-1121, which is said to be used in illegally transportation of 2-1/2 units of river sand and investigation is pending. The seized Ashok Leyland Tipper Lorry, bearing Registration No.TN-69-U-1121,

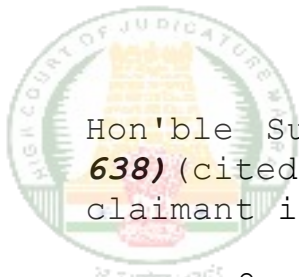
was remanded to the learned Judicial Magistrate, Sathankulam, in P.R.No.205 of 2017 and now is in the custody of the respondent Police.

4. The petitioner herein has filed a petition in CrI.M.P.No.7911 of 2017, before the learned Judicial Magistrate, Sathankulam, claiming interim custody of the seized vehicle from the Court, as owner of the said vehicle, and the same was dismissed on 21.09.2017, by the concerned Court stating that the petitioner may try to sell or alter the vehicle or destroy the evidence of the said vehicle. Aggrieved by that order of dismissal, the present Criminal Revision is filed by the petitioner praying to set aside the impugned order, dated 21.09.2017 passed in CrI.M.P.No.7911 of 2017, by the learned Judicial Magistrate, Santhankulam.

5. Perused the materials available on record. Heard and considered the rival submissions made on either side.

6. It is pertinent to be noted that the respondent Police has not disputed the seizure of the vehicle of the petitioner viz., Ashok Leyland Tipper Lorry, bearing Registration No.TN-69-U-1121, as stated above, and as on date, the seized and remanded vehicle is admittedly in the custody of the respondent Police. The ownership of the petitioner is also not disputed in the impugned order itself. At this juncture, this Court is constrained to incorporate the relevant guidelines and principles laid down by the Hon'ble Apex Court in the Judgment in **Sunderbhai Ambalal Desai Vs. State Of Gujarat** reported in **(AIR 2003 SC 638)** in which it has been held that "the powers under Section 451 of Cr.P.C., should be exercised expeditiously and judicially. It would serve various purposes viz., (i) owner of the vehicle would not suffer because of its remaining unused or by its misappropriation; (ii) Court or Police would not be required to keep the articles in safe custody; (iii) If the proper panchanama before handing over the possession of the vehicle is prepared, that can be used in evidence instead of its production before the Court during trial (3) If necessary, evidence could also be recorded describing the nature of the property in detail and this jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

7. It is of no use to keep such seized vehicle at the Police Station for a long period. In any case, before handing over possession of such vehicle, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared. The assigned reasons for dismissal of the claim of the petitioner in respect of the seized vehicle for interim custody is not legally sustainable in view of the dictum laid down by the



Hon'ble Supreme Court in the Judgment reported in **(AIR 2003 SC 638)** (cited supra). Except the petitioner, there is no rival claimant in respect of the vehicle.

8. In the above stated circumstances, this Court is inclined to allow this Revision by setting aside the impugned order. Accordingly, the Criminal Revision stands allowed and the impugned order, dated 21.09.2017, passed by the learned Judicial Magistrate, Sathankulam in Cr.M.P.No.7911 of 2017, is set aside, on the following terms:-

(i). The learned Judicial Magistrate is directed to hand over the seized and remanded vehicle viz., Ashok Leyland Tipper Lorry, bearing Registration No.TN-69-U-1121, to the Revision Petitioner, in execution of a bond for Rs.3,00,000/- (Rupees Three Lakhs Only) by the petitioner herein.

(ii). Appropriate Photographs in different angles of the said vehicle should be taken at the cost of the petitioner herein.

(iii). A detailed Panchanama should be prepared before handing over the possession of the remanded vehicle.

(iv). The Original R.C.Book should be surrendered by the petitioner to the Court.

(v) The petitioner should not sell or alter the vehicle while in any manner, while he is in custody of the said vehicle.

(vi). The petitioner should produce the vehicle, as and when required by the said Court.

Sd/-

Assistant Registrar(writs)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Sathankulam,

2. The Inspector of Police,
Nazareth Police Station,
Thoothukudi District

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



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

+1cc to M/s.Polax Legal Solutions,Sr.No.82737

MPK

VB/KK/SAR3/24/10/2017/4P/6C

**Orders made in
Crl.RC(MD)No.773 of 2017
13.10.2017**