

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

CORAM :

THE HON'BLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.4115 of 2018

K.Periyaswamy

.. Petitioner

Versus

The Inspector of Police,
Sangarapuram Police Station,
Villupuram District.

.. Respondent

Criminal Original Petition is filed under Section 482 Cr.P.C. praying to set aside the order in C.R.P.No.35 of 2017 on 12.11.2018 passed by the learned III Additional Sessions Judge, Kallakurichi in C.MP.No.7044 of 2017 on the file of the Judicial Magistrate, Sangarapuram and direction directing the respondent herein to return the petitioner John Deer Tractor along with Tipper bearing Registration No. TN - 47- Z - 4939 to the petitioner.

For Petitioner : Mr.V.R.Kamalanathan

For Respondents : Mrs.P.Kritika Kamal
Government Advocate (Crl. Side)

O R D E R

This petition has been filed by the petitioner to direct the respondent to return his vehicle viz., John Deer Tractor along with Tipper bearing Registration No. TN - 47- Z - 4939.

2. The petitioner submitted that he had purchased a second hand John Deer Tractor along with Tipper bearing Registration No. TN - 47- Z - 4939 from one Sakthivel through the financier Sri Ran Finance. While the petitioner went to his agricultural land the above said tractor was seized by the respondent and a false case was registered against him in Crime No.587 of 2017 for the offences under Sections 379 of I.P.C r/w 21 (i) of Mines and Minerals (Development and Regulation) Act, 1957. Further, the petitioner herein filed a petition in C.M.P.No.7044 of 2017 before the learned Judicial Magistrate at Sangarapuram for return of property and the same was dismissed on 23.11.2017 on the ground that the above said vehicle was not in his name.

Against which the petitioner filed a petition in C.R.P.No.35 of 2017 before the III Additional Sessions Judge at Kallakurichi and the same was dismissed on 12.11.2018. Now the R.C Book has been changed in the name of the petitioner. Hence, he has approached this Court by way of the present petition for recovery of property which is under the custody of the respondent.

3. Heard Mr.V.R.Kamalanathan, learned counsel for the petitioner as well as Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the respondents.

4.The learned counsel for the petitioner would seek to impress upon this Court that a false case stands foisted upon the petitioner. This Court is now concerned with return of property, pure and simple.

5. In the circumstances above stated, the Hon'ble Supreme Court in a judgment in Sunderbhai Ambalal Desai v. State of Gujarat reported in AIR 2003 Supreme Court 638 had clearly laid down the dictum in connection with the custody and disposal of property pending trial in certain cases. The relevant portion of the said order reads as follows:

"7.In our view, the powers under Section 451 Cr.P.C., should be exercised expeditiously and judiciously. It would serve various purposes, namely:--

1.Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2.Court or the police would not be required to keep the article in safe custody;

3.If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4.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.

17.In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders

immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

6. In line with the above observations of the Hon'ble Supreme Court, it would be appropriate to order release of vehicle on the following conditions:

The respondent police is directed to produce the vehicle before the concerned Jurisdictional Court within a week from the date of receipt of a copy of this order and on production of the said vehicle, the concerned Jurisdictional Magistrate shall return the vehicle viz., John Deer Tractor along with Tipper bearing Registration No. TN - 47- Z - 4939 in the custody of the petitioner after complying with the following:

i) The lower Court shall cause photographs of the vehicle to be taken and record panchanama thereof, the photographs taken shall be read as secondary evidence during trial and production of the vehicle shall be dispensed with.

ii) The vehicle shall then be returned to the petitioner, who shall be at liberty to deal with the same in such manner as considered appropriate.

7. The above order is not determinant of the ownership or other rights in respect of the vehicle.

8. With the above observations and directions, the Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

klt

To

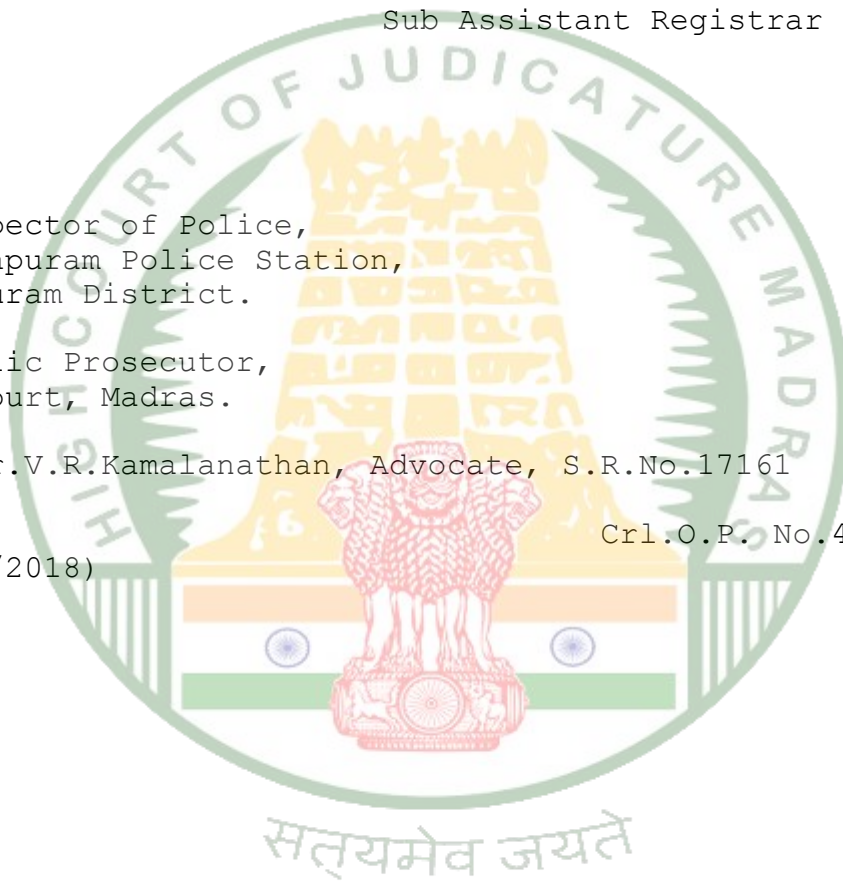
1.The Inspector of Police,
Sangarapuram Police Station,
Villupuram District.

2.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.V.R.Kamalanathan, Advocate, S.R.No.17161

Crl.O.P. No.4115 of 2018

RRK(08/03/2018)



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