

**Crl.O.P.No. 3288 of 2018****M.S.RAMESH, J.**

Today, the matter is listed under the caption “For Clarification”.

2. In continuation of my earlier order dated 20.02.2018, it is hereby clarified that the vehicle is directed to be released to the custody of the petitioner herein along with the sand transported in the same. All the other observations made in the earlier order dated 20.02.2018 in Crl.O.P.No.3288 of 2018 shall remain intact.

**22.03.2018**

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M.S.RAMESH. J,

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Crl.O.P.No.3288 of 2018

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22.03.2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 20.02.2018**

**CORAM :**

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

**Crl.O.P.No.3288 of 2018**

N.Soundarajan

.. Petitioner

Vs.

1.The Superintendent of Police,  
Cuddalore District,  
Cuddalore.

2.The Sub Inspector of Police (Excise),  
Srimushnam Police Station,  
Cuddalore District.  
(Crime No.19 of 2018)

.. Respondents

Prayer :The Criminal Original Petition is filed under Section 482 Cr.P.C. praying to direct the respondents to return the petitioner's lorry of Ashok Leyland Ltd make and bearing registration number TN51 A 5452 within a reasonable time as fixed by this Court.

For Petitioner : Mr.K.S.Karthik Raja

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

**ORDER**

This petition has been filed by the petitioner to direct the second respondent to return his vehicle viz., Ashok Leyland Ltd bearing Registration No.TN51 A 5452.

2.The petitioner submitted that he is the owner of Tanker Lorry manufactured by Ashok Leyland Ltd bearing Registration No.TN51 A 5452 and he is a lawful transporter of sand. He is regularly using the lorry for transportation of sand by purchasing the same by making an online booking with Tamilnadu Mines and Minerals Department. While that being so, on 16.12.2017 he made an online booking vide Booking Reference No.984288 for the purchase of sand and the date for collecting the sand was fixed on 27.01.2018. On 27.01.2018, when the petitioner's driver had taken the lorry as per the online booking, the Assistant Engineer lodged a complaint with the second respondent for the reason that the engine number in the online receipt and the vehicle is different. Based on the complaint, the second respondent registered an FIR in Crime No.19 of 2018 against the Petitioner's driver and seized the petitioner's lorry under his custody. He states that the sale of sand is regulated and allotted through vehicle number only, not

through engine number or chasis number. Hence, he has no other remedy except to approach this Court by way of the present petition.

3. Heard Mr.K.S.Karthik Raja, 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 second 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., Ashok Leyland Ltd bearing Registration No.TN51 A 5452 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.

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**20.02.2018**

Index:Yes/No  
Internet:Yes/No

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To

- 1.The Superintendent of Police,  
Cuddalore District,  
Cuddalore.
- 2.The Sub Inspector of Police (Excise),  
Kottaikuppam Police Station,  
Cuddalore District.
- 3.The Public Prosecutor,  
High Court, Madras.



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**M.S.RAMESH. J.,**

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**WEB COPY** 20.02.2018