



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.01.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Cr1.R.C. (MD)No.932 of 2017

Gopal

: Petitioner / Petitioner

Vs.

The State Rep. by
The Sub-Inspector of Police,
Chinna Kovilankulam Police Station,
Tirunelveli District.
(In Crime No.109 of 2017)

: Respondent / Complainant

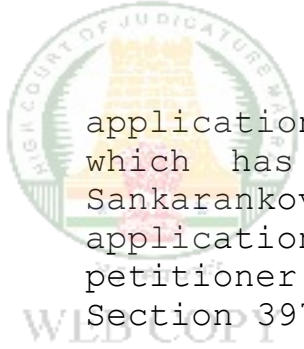
PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records of the order passed by the Learned Judicial Magistrate, Sankarankovil, Tirunelveli District in Cr.M.P.No.2639 of 2017, dated 15.11.2017 and subsequently, this Court may direct the respondent police to return the vehicle bearing No.TN 76 Z 6156 and Tractor Trailer bearing No.TN 67 F 1000 in connection with Crime No.109 of 2017 on the file of the respondent police.

For Petitioner : Mr.A.Uthayakumar

For Respondent : Mr.C.Mayil Vahana Rajendran,
Additional Public Prosecutor

ORDER

A case in Chinna Kovilankulam Police Station Crime No.109 of 2017 was registered on 11.09.2017 under Section 379 of the Indian Penal Code against Kumar, the son of the petitioner herein, for illegal transport of sand in Tractor bearing Registration No.TN-76-Z-6156 and Trailer bearing Registration No.TN-67-F-1000 and he was arrested on 11.09.2017 along with the vehicle and sand. Admittedly, Kumar had been released on bail. The Tractor, Trailer and sand were produced before the learned Judicial Magistrate, Sankarankovil, in P.R.No.202 of 2017 and the same have been handed over to the police for safe custody. While so, the petitioner filed an application under Section 451 of the Code of Criminal Procedure for return of the Tractor and Trailer and the same appears to have been dismissed by the learned Judicial Magistrate, Sankarankovil on the ground that the petitioner had not produced any document to show that he was the owner of the Tractor and Trailer. Therefore, the petitioner has filed the second



application in Cr.M.P.No.2639 of 2017 in Crime No.109 of 2017, which has been dismissed by the learned Judicial Magistrate, Sankarankovil, on 15.11.2017 on the short ground that the second application is not maintainable. Challenging the said order, the petitioner has filed the present Criminal Revision Case under Section 397 of the Code of Criminal Procedure.

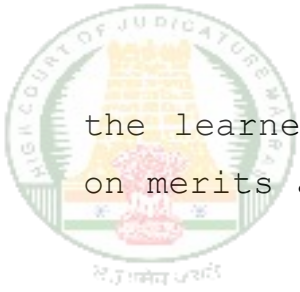
2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. Mr.V.Mariappan, Special Sub-Inspector of Police, Chinna Kovilankulam Police Station is present in Court today. On instructions, the learned Additional Public Prosecutor submitted that the sand has not been handed over to the Revenue Authorities and the same is with the Tractor and Trailer in the Police Station. The learned Additional Public Prosecutor further submitted that the investigation in Crime No.109 of 2017 has been completed and the charge sheet has been filed on 29.09.2017, but the same has not been taken on file.

4. In the considered opinion of this Court, an order under Section 451 of the Code of Criminal Procedure is an interlocutory order and, therefore, a revision petition cannot be maintained, in view of the bar under Section 397(2) of the Code of Criminal Procedure. Hence, the Registry ought not to have numbered this revision at all. Be that as it may, the fact remains that there is no provision in law under the Mining Rules for confiscation of the Tractor and Trailer used for transporting sand. The sand should have to be handed over to the Revenue Divisional Officer concerned and the vehicle will be produced as a piece of evidence during trial. In this case, the police have not even handed over the sand to the Revenue Authorities.

5. In such view of the matter, this Court directs the police to immediately hand over the sand to the Revenue Authorities. Further, this Court is of the view that a second application under Section 451 of the Code of Criminal Procedure is maintainable in the facts and circumstances of this case, since there is a change in fact situation, which gives a new cause of action for the petitioner to prefer a second application under Section 451 of the Code of Criminal Procedure for return of the Tractor and Trailer. Of course, the learned Magistrate shall consider the application purely on merits without in any manner being influenced by what is stated above.

6. In the result, this Criminal Revision Case is allowed and the order passed by the learned Magistrate in Cr.M.P.No.2639 of 2017, dated 15.11.2017, in connection with the case in Crime No.109 of 2017, is set aside and the matter is remanded back to



the learned Judicial Magistrate, Sankarankovil for fresh disposal on merits and in accordance with law.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

SML

To

- 1.The Judicial Magistrate,
Sankarankovil, Tirunelveli District.
- 2.The Sub-Inspector of Police,
Chinna Kovilankulam Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO Mr.A.UTHAYAKUMAR , Advocate, Sr.No. 40078

JAM/10/01/2018/JC/ SAR 2/ 3P-5C

Order made in
Cr1.R.C. (MD) No.932 of 2017
Dated:-
02.01.2018