

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 29.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.45 of 2019

Sivaraj @ Sivarajan

...Petitioner/Owner of the Vehicle

-Vs-

The State rep. by

The Sub-Inspector of Police,  
Thirukalukundram Police Station,  
Kancheepuram District.

Crime No.565 of 2018

...Respondent/Complainant

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. praying to call for the records and set aside the order dated 03.01.2019 passed by the learned District Munsif cum Judicial Magistrate, Thirukalukundram in Crl.MP.No.8749 of 2018 and to return the Tipper Lorry bearing registration No.TN 32 E 1561 to the custody of the petitioner.

For Petitioner : Mr.G.Punniakoti

For Respondent : Mr.G.Harihara Arun Somasankar  
Government Advocate (Crl.Side)

O R D E R

In the present revision case, the learned District Munsif cum Judicial Magistrate, Thirukalukundram, has rejected the petition filed under Section 451 and 457 of Cr.P.C. for return of vehicle on the ground that the Division Bench of this Court in its order dated 29.10.2018 in a batch of writ petitions has directed inter alia that such petitions for return of vehicle need to be filed before the Special Courts. Earlier the Division Bench had also held that petitions for release of vehicle ought not to be entertained by any Court. However, on the same day i.e. 29.10.2018, the same Division Bench has also passed the order in a batch of writ petitions in W.P.(MD). Nos.22023 to 22026 etc., for return of the vehicles by imposing certain conditions as found in paragraph no.7, which is extracted hereunder:

"7.Accordingly, the concerned respondents are directed to release the vehicle in question to the petitioners within a period of 7 days from the date of receipt of a copy of this order subject to the following

conditions:

"(i) The petitioners shall produce necessary documents before the respondents to establish the ownership of the vehicle in question.

(ii) The petitioners in W.P.(MD).Nos.215639, 21816 and 21300 of 2018 shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, before the Tahsildar concerned as non refundable deposit and the petitioners in other cases shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) each, before the Tahsildar concerned as non refundable deposit;

(iii) The petitioners shall give an undertaking that he will not use the vehicle for any illegal activities in future and shall produce the same as and when required by the respondents;

(iv) on doing so, the vehicle in question shall be returned to the petitioners;

(v) The petitioners shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned; and

(vi) The petitioners are also directed to participate in the enquiry to be conducted by the respondents."

2. On the basis of the above directions, this Court has passed orders in few cases ordering return of vehicle by incorporating the conditions as imposed by the Division Bench of this Court. However, it appears that in view of the earlier order dated 29.10.2018 in W.P.Nos.19936 of 2017 etc., regarding formation of Special Court to deal with such matters involved in illegal transportation of mines and minerals, the learned Magistrate had rejected the petition for return of vehicle filed by the petitioner.

3. While so, subsequently, the same Division Bench by yet another order dated 11.01.2019 has clarified as follows.

"2. We find considerable force in the submission made by the learned counsel at the bar. Factually, it appears that Special Courts are not constituted. Therefore, we direct the Registry to take up the issue with the State Government and see to it that Special Courts are constituted preferably within a period of two months from the date of receipt of a copy of the order. In the meanwhile, Clause (xvi) of para 13 of the order dated 29.10.2018 passed by us stands stayed. Resultantly, writ petitions can be filed before this Court seeking release of the vehicles as Special Courts are yet to be constituted. We make it clear that this is only an interim arrangement till the constitution of the Special Courts, which will deal with it when the matter is taken up for hearing on the next occasion. However, the order

passed by us with respect to making of the complaint is not disturbed and therefore, the aforesaid direction also stands clarified that such complaints will have to be filed before the jurisdictional Magistrate who shall keep them pending awaiting appropriate orders for the constitution of the Special Courts. As and when Special Courts are constituted, the Magistrates are directed to commit the cases as per law. We further make the position clear that after the constitution of Special Courts, if new complaints are filed, then, our earlier direction issued to the concerned Magistrates would stand."

4. In view of the admitted position that the Special Courts have not been constituted as yet and this petitioner is left without any remedy and in the interest of justice, the impugned order dated 03.01.2019 passed by the learned Magistrate in Crl.M.P.No.8749 of 2018 is hereby set aside. The vehicle covered under Crl.M.P.No.8749 of 2018 is ordered to be released within a period of one week from the date of receipt of a copy of this order subject to the following conditions:

"(i) The petitioner shall produce necessary documents before the trial Court to establish the ownership of the vehicle in question.

(ii) The petitioner shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), before the jurisdictional Court as non refundable deposit;

(iii) The petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future and shall produce the same as and when required by the Court;

(iv) The petitioner shall not alienate the vehicle in question till the disposal of the proceedings before the trial Court; and

(v) The petitioner is also directed to co-operate in trial proceedings pending before the Court below."

5. In the result, the criminal revision is allowed in all the above terms.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

cgi/rna

To

1.The District Munsif cum Judicial Magistrate, Thirukalukundram.

2.The Sub-Inspector of Police, Thirukalukundram Police Station,  
Kancheepuram District.

3.The Public Prosecutor, High Court, Madras.

+1 CC to M/s.G. Punniyakotti, Advocate sr 7296.

Crl.R.C.No.45 of 2019

NMI (CO)  
SP(12/02/2019)



WEB COPY