

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.Nos.91, 92 and 94 to 96 of 2019

Manikandan ...Petitioner in Crl.R.C.No.91/2019

DineshkumarPetitioner in Crl.R.C.No.92/2019

RajkumarPetitioner in Crl.R.C.No.94/2019

KumarPetitioner in Crl.R.C.No.95/2019

RajkumarPetitioner in Crl.R.C.No.96/2019

Vs.

State rep by its.,
The Inspector of Police,
B-3, Kanchi Taluk Police Station,
Kanchipuram,
Kanchipuram District.Respondent in all the Crl.RCs

Prayer in Crl.R.C.No.91/2019: The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records relating the order dated 07.01.2019 made in C.M.P.No.6387 of 2018 in Crime No.613 of 2018 on the file of learned Judicial Magistrate No.II, Kanchipuram and set aside the same and direct the respondent herein to return the Vehicle namely, Ashok Leyland Tipper Lorry bearing Registration No. TN-20-BA-2426 Engine No:KNE446932, Chassis No.KNH131693.

Prayer in Crl.R.C.No.92/2019: The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records relating the order dated 07.01.2019 made in C.M.P.No.4936 of 2018 in Crime No.656 of 2018 on the file of learned Judicial Magistrate No.II, Kanchipuram and set aside the same and direct the respondent herein to return the Vehicle namely, Ashok Leyland Tipper Lorry bearing Registration No. TN-19-F-5645 Engine No:BPIIZ400084, Chassis No.MB1IITDYC2BIIPC7665.

Prayer in Crl.R.C.No.94/2019: The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records relating the order dated 07.01.2019 made in C.M.P.No.4659 of 2018 in Crime No.656 of 2018 on the file of learned Judicial Magistrate No.II, Kanchipuram and set aside the same and direct the respondent herein to return the Vehicle

namely, Lorry TATA SK 1613/TRUCK bearing Registration No.TN 21 P 4395, Engine no 697D44KVZ933464 Chassis No.405121KVZ745165.

Prayer in Crl.R.C.No.95/2019: The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records relating the order dated 07.01.2019 made in C.M.P.No.76 of 2019 in Crime No.671 of 2018 on the file of learned Judicial Magistrate No.II, Kanchipuram and set aside the same and direct the respondent herein to return the Vehicle namely, Ashok Leyland Tipper Lorry bearing Registration No. TN 47 AJ 3053, Engine No. DNE450176 Chassis no.DNH135144.

Prayer in Crl.R.C.No.96/2019: The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records relating the order dated 07.01.2019 made in C.M.P.No.4935 of 2018 in Crime No.656 of 2018 on the file of learned Judicial Magistrate No.II, Kanchipuram and set aside the same and direct the respondent herein to return the Vehicle namely, Ashok Leyland Tipper Lorry bearing Registration No. TN 38 AV 1766, Engine No.FNE448679, Chassis No.FNH133654.

For Petitioner: Mr.A.Saranraj

For Respondent: Mr.G.Hari Hara Arun Soma Sankar,
Govt. Advocate (Crl.Side)

COMMON ORDER

In the present revision cases, the learned Judicial Magistrate No.II, Kanchipuram, has rejected the petitions filed under Section 451 and 457 of Cr.P.C. for return of vehicles 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 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 petitions for return of vehicles filed by the petitioners

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 petitioners are left without any remedy and in the interest of justice, the impugned orders dated 07.01.2019 passed by the learned Magistrate in the respective Criminal Miscellaneous Petitions are hereby set aside. The vehicles covered under the Crl.M.P.Nos.6387/2018, 4936/2018, 4659/2018, 76/2019 and 4935/2018 are 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 petitioners shall produce necessary documents before the trial Court to establish the ownership of the vehicle in question.

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

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

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

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

5 In the result, the criminal revisions are allowed in all the above terms.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

1. Judicial Magistrate No.II, Kanchipuram

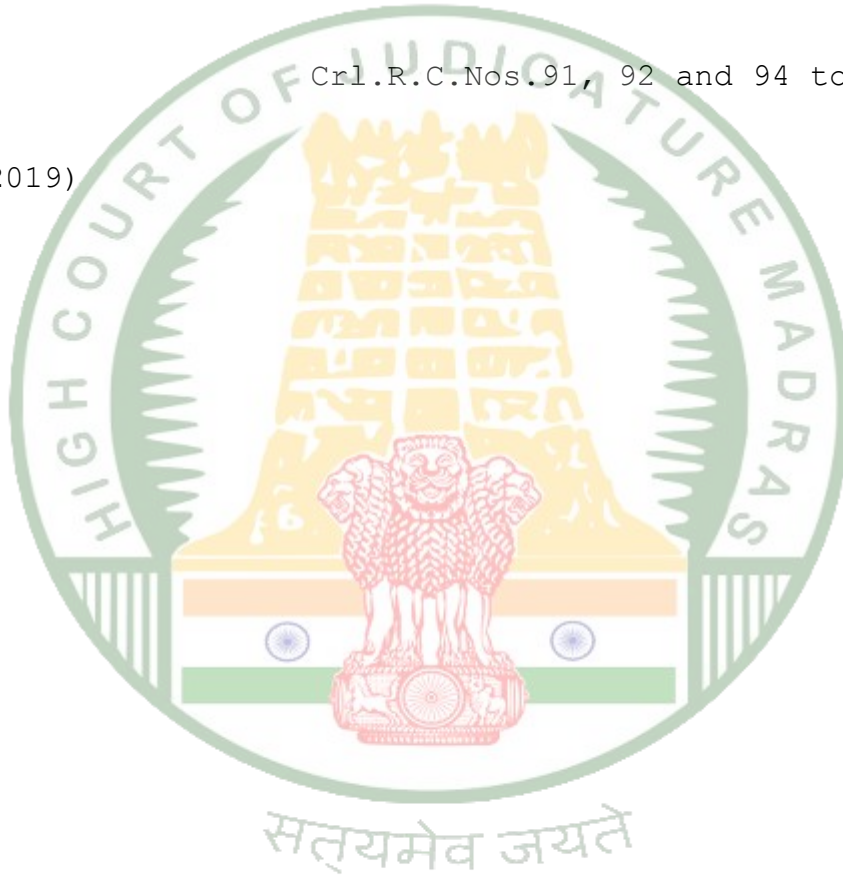
2. The Inspector of Police,
B-3, Kanchi Taluk Police Station,
Kanchipuram, Kanchipuram District.

3. The Public Prosecutor, High Court of Madras.

+5 CCS to Mr.A.Saranraj, Advocate sr 7340 to 7344.

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SP(11/02/2019)



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