

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.127 of 2019

S.Kaliyamoorthy

...Petitioner

Vs.

The State rep by
The Inspector of Police,
Virudhachalam,
Cuddalore District.

...Respondent

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order passed by the Learned Judicial Magistrate-I, Virudhachalam, Cuddalore District in Crl.M.P.No.7370/2018 dated 31.12.2018 and subsequently direct the lower Court to entertain the petition and to order release of the vehicle namely Bullock Cart with Tyre wheels.

For Petitioner : Mr.N.Sakthivel

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

ORDER

In the present revision case, the learned Judicial Magistrate-I, Virudhachalam, Cuddalore District, 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 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 31.12.2018 passed by the learned Magistrate in C.M.P.No.7370 of 2018 is hereby set aside. The vehicle covered under C.M.P.No.7370 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, ***if applicable;**

(ii) The petitioner shall deposit a sum of Rs.10,000/- (Rupees ***Ten 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.
cgi

Sd/-

Assistant Registrar

Dated : 06/02/2019

***Corrected as per order dated 18/02/2019
in Cr1.OP.No118 to 135/19**

Sd/-

Assistant Registrar

Dated : 19/02/2019

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate-I,
Virudhachalam,
Cuddalore District.
2. The Inspector of Police,
Virudhachalam, Cuddalore District.
3. The Public Prosecutor,
High Court of Madras.
4. The Chief Judicial Magistrate,
Cuddalore Dist.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

**To be substituted to
order already dispatched
on 12/02/2019**

***+1cc to M/S.C.Kousalya Devi, Advocate, S.R.No.7761 (14464)**

Cr1.R.C.No.127 of 2019

ssv(co)
kak(06/02/2019)
GMY(20/02/2019)