

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.07.2019

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

Crl.R.C.No.640 of 2019

P.Gunasekaran

... Petitioner/ Petitioner

Vs.

State rep. by the Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District,
Cr.No.185/2018

... Respondent/ respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the order passed by the District Munsif-cum-Judicial Magistrate, Portonovo in Crl.M.P.No.3393 of 2018 dated 30.11.2018 and consequently direct the respondent police to release the tractor bearing registration No.TN46 E 9268, Engine No.NCNW9373, Chassis NCNW 9373H6 by taking note of the order made by the Division Bench of High Court, Madras (Madurai Bench) in W.P.(MD)No.22023 to 22026 of 2018 dated 29.10.2018.

For Petitioner : Mr.T.Sundaresan
For Respondent : Mr.G.Ramar
Govt. Advocate (Crl.Side)

O R D E R

This criminal revision has been filed seeking to set aside the order dated 30.11.2018 passed by the District Munsif-cum-Judicial Magistrate, Portonovo in Crl.M.P.No.3393 of 2018.

2.It is the case of the prosecution that on 26.07.2018, one Prakash and Ayyappan were transporting one unit of sand by tractor bearing registration No.TN46 E 9268, the accused were arrested and the tractor has been seized by the police. The petitioner filed C.M.P.No.3393 of 2018 under Section 451 Cr.P.C. for interim custody of the tractor, which was dismissed by the District Munsif-cum-Judicial Magistrate, Portonovo on 30.11.2018, on the ground that the High Court had passed orders in W.P.(MD).No.7595 of 2018 dated 24.09.2018, holding that the Magistrate has no power to grant interim

custody. Challenging the said order, the petitioner has filed the present revision petition.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent.

4. It is seen that subsequent to the order dated 24.09.2018 passed by the Madurai Bench of this Court in W.P. (MD).No.7595 of 2018, another Division Bench of this Court, in W.P.No.7018 of 2019, has held that the trial Court has power under Section 451 Cr.P.C. to return the vehicles seized for transporting sand. The fact remains that the petitioner has never been shown as accused in the case. The tractor is now in the police station and it is open to sun and rain.

5. In view of the law laid down in *Sunderbhai Ambalal Desai Vs. State of Gujarat* [(2002) 10 SCC 290], this petition is allowed and the order dated 30.11.2018 passed by the District Munsif-cum-Judicial Magistrate, Portonovo in Crl.M.P.No.3393 of 2018 is set aside. The District Munsif-cum-Judicial Magistrate, Portonovo is directed to grant interim custody of the said tractor bearing registration No.TN46 E 9268 to the petitioner within a period of 7 days from the date of compliance of the below mentioned condition Nos.(i) to (iii) :

- i. The petitioner shall deposit a sum of Rs.10,000/- before the jurisdictional Tahsildar as non-refundable deposit. After receipt of the above said amount, the same will have to be deposited by the Tahsildar, to the credit of the District Mines and Minerals Foundation Trust as non-refundable deposit.
- ii. The petitioner shall execute a personal bond for a sum of Rs.10,000/- with two sureties each for a like sum to the satisfaction of the District Munsif-cum-Judicial Magistrate, Portonovo. The petitioner and the sureties shall affix their photographs and give the copies of their Aadhaar Card.
- iii. The petitioner shall give an undertaking before the respondent/ authority concerned stating that he will not use the vehicle in question for any illegal activities in future and shall produce the same as and when required by the respondent and also the trial Court, failing which the

respondent/trial Court is at liberty to confiscate the vehicle.

iv. The petitioner shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned.

v. The petitioner shall take photograph of the tractor and submit the same along with Compact Disc duly certified under Section 65-B of the Evidence Act.

vi. The petitioner is also directed to participate in the enquiry to be conducted by the respondent.

Sd/-

Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif-cum-Judicial Magistrate, Portonovo.

2. The Tahsildar, Portonovo, Cuddalore District.

3. The Inspector of Police, Bhuvanagiri Police Station, Cuddalore District.

4. The Public Prosecutor, High Court, Madras.

+1cc to Mr. T. Sundaresan, Advocate SR.No. 57603

Cr1.R.C.No.640 of 2019

A.SK(22/07/2019)

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