

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.R.C.No. 534 of 2019

Arjunan

Petitioner

Vs

State by

The Inspector of Police
Koradachery Police Station
Tiruvarur District
Crime No.51 of 2019

Respondent

PRAYER: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order of dismissal made in CMP No.1855 of 2019 dated 10.05.2019 on the file of the District Munsif cum Judicial Magistrate, Nannilam, Full Additional charge of the Judicial Magistrate, Tiruvarur.

For Petitioner : Mr.Karthikeyan for
M/s.Deepan Uday

For Respondent : Ms.P.Kritika Kamal
Government Advocate (Criminal Side)

O R D E R

The Criminal Revision Petition has been filed challenging the dismissal order passed by the District Munsif-cum-Judicial Magistrate, Nannilam on 10.05.2019 in CMP No.1855 of 2019.

2. The brief facts of the case are that on 12.02.2019, the Sub-Inspector of Police intercepted the Tipper lorry bearing Reg.No.TN 46 H 2229 carrying sand illegally, which was driven by one Kesavaraj (A1) and registered a case in Koradachery Police Station Crime No.51 of 2019 on the same day under Section 379 IPC and Section 21 (1) of the Mines and Mineral (Development & Regulation) Act, 1957 against the driver (A1) and the owner(A2) of the lorry and arrested the 1st accused and seized the lorry. The said lorry was produced before the District Munsif cum Judicial Magistrate, Nannilam.

3. The petitioner, who is the owner of the said lorry and shown as the second accused (A2) in the First Information

Report filed Crl.M.P.No.1855 of 2019 under Section 451 Cr.P.C, for interim custody of the lorry, which has been dismissed by the trial Court on 10.05.2019 on the ground that the Division Bench of this Court, in W.P.No.7595 of 2018 and in W.P.(MD) No.22023 to W.P.No.22026 of 2018, has held that no return of property order can be passed by the Magistrate and such orders can be passed only by the Special Courts. Challenging the order dated 10.05.2019, the petitioner is before this Court.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) for the respondent police.

5. It is seen that subsequent to the above said orders, the Division Bench of this Court in W.P.No.34656 of 2018 vide order dated 29.04.2019, has held that the Magistrate has power to pass appropriate orders under Section 451 Cr.P.C, in matters relating to Mines and Minerals Development and Regulation Act.

6. In view of the above, this Criminal Revision Petition is allowed and the order dated 10.05.2019 passed by the District Munsif cum Judicial Magistrate, Nannilam in CMP No.1855 of 2019 is set aside. The respondent is directed to release the Tipper lorry bearing Reg.No.TN 46 H 2229 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/- (Rupees Ten Thousand only) before the jurisdictional Tahsildar concerned as non-refundable deposit. After receipt of the above said amount, the same will have to be deposited by the jurisdictional Tahsildar concerned, 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/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the concerned jurisdictional Judicial Magistrate.

(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 activity 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/are 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 is also directed to participate in the enquiry/trial to be conducted by the respondent.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vrn

To

1. The Inspector of Police
Koradachery Police Station
Tiruvarur District
2. The District Munsif cum Judicial Magistrate, Nannilam,
Full Additional charge of the Judicial Magistrate, Tiruvarur
3. The Public Prosecutor
High Court
Madras

+1 CC to Mr. Deepan Uday Advocate sr 50542

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SS(CO)
SP(11/07/2019)