

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.08.2019

CORAM

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

Crl.R.C.No.738 of 2019

K.Ambigapathy

... Petitioner

Vs.

State by

Inspector of Police,
Koradachery Police Station,
Tiruvarur District.

Cr.No.71 of 2019

.... Respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the order passed by the Judicial Magistrate, Tiruvarur in Crl.M.P.No.2292 of 2019 by order dated 26.06.2019 and to direct the respondent to return the vehicle (viz.) mahendra tractor with tipper bearing Reg.No.TN 50 J 1310 to the petitioner in Crime No.71 of 2019 pending on the file of the respondent.

For Petitioner : Mr.K.R.Ramesh Kumar

For Respondent : Mrs.P.Kritika Kamal
Govt. Advocate (Crl.Side)

O R D E R

This criminal revision has been filed seeking to set aside the order dated 26.06.2019 passed by the Judicial Magistrate, Tiruvarur in Crl.M.P.No.2292 of 2019.

2.During regular rounds, the respondent police intercepted a mahindra tractor bearing registration No.TN 50 J 1310 containing two units of sand and arrested Kumaraguru (A1), Mathavan (A2) and Ambigapathi (A3) and registered a case in crime No.71 of 2019 on 13.03.2019 under Section 379 IPC and Section 21(1) of Mines and Minerals (Development & Regulation) Act, 1957. After release on bail, Ambigapathi (A3) filed Crl.M.P.No.2292 of 2019 under Section 451 Cr.P.C. before the Judicial Magistrate, Tiruvarur for return of the said vehicle, which has been dismissed by the learned Magistrate on

26.06.2019, aggrieved by which, Ambigapathi (A3) is before this Court.

3. Heard the learned counsel for the petitioner/Ambigapathi (A3) and the learned Government Advocate (Crl. Side) appearing for the respondent State.

4. In the opinion of this Court, the learned Magistrate was perfectly justified in making the following observation, while dismissing the petition filed by Ambigapathi (A3) :

"In the recent past, the Hon'ble High Court has made several orders to curb the sand theft and to protect the natural resources of this country."

5. Learned Government Advocate (Crl. Side) submitted that there is no previous case against the petitioner nor this vehicle involved in any other case earlier. Though the reasons given by the learned Magistrate in dismissing the petition cannot be faulted, yet, this Court is of the view if the vehicle remains in the custody of the police indefinitely, it will get deteriorated.

6. In view of the guidelines given by the Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* [(2002) 10 SCC 290], this Court is of the view that interests of justice will be served, if the vehicle is ordered to be released to the petitioner on certain stringent conditions. In the result, this petition is allowed and the order dated 26.06.2019 passed by the Judicial Magistrate, Tiruvarur in Crl.M.P.No.2292 of 2019 is set aside. The respondent police is directed to grant interim custody of the said tractor bearing registration No.TN 50 J 1310 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.20,000/- 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 Judicial Magistrate, Tiruvarur. 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.

gya

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Tiruvarur.

2.The Tahsildar,
Tiruvarur District.

3.The Inspector of Police,
Koradachery Police Station,
Tiruvarur District.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.R.Ramesh Kumar, Advocate, SR.No.66933

Kak(12/09/2019)

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