

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P.No.25109 of 2019

M.Ramesh

...Petitioner

Vs

1. The Inspector of Police,
Karumalaikoodal Police Station,
Salem District.
2. The Assistant Geologist / Deputy Director
Geographical and Mines Department,
Salem. ...Respondents
[R2 impleaded vide this Court Order dated 04.10.2019
made in Crl.MP.No.14363 of 2019 in Crl.O.P.No.25109 of 2019]

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct the respondent to release the petitioner's vehicle bearing registration No.TN 52 V 3983 Mahindra Navistar Automotives Loading Tipper in pursuance of the petitioner's representation dated 10.09.2019.

For Petitioner: Mr.M.Subash

For Respondents : Ms.V.Saratha Devi
Government Advocate (Crl. Side)

ORDER

The petitioner's vehicle bearing registration No.TN 52 V 3983 Mahindra Navistar Automotives Loading Tipper is now under the custody of the Tahsildar, Mettur, which was seized by the Special Revenue Inspector(Mines), Department of Geology & Mining, Salem on 06.09.2019 for alleged illegal transport of rough stones.

2.The learned counsel for the petitioner relied upon the report of Assistant Geologist / Deputy Director Geographical and Mines Department, Salem/2nd respondent herein, which has been addressed to the 1st respondent police stating that the vehicle can be released under Court orders in view of the Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957.

3. In the circumstances above stated, the Hon'ble Supreme Court in a judgment in *Sunderbhai Ambalal Desai v. State of Gujarat* reported in AIR 2003 Supreme Court 638 had clearly laid down the dictum in connection with the custody and disposal of property pending trial in certain cases. The relevant portion of the said order reads as follows:

"7. In our view, the powers under Section 451 Cr.P.C., should be exercised expeditiously and judiciously. It would serve various purposes, namely:--

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by

the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

4. In line with the above observations of the Hon'ble Supreme Court and in view of the custody report dated 06.09.2019 of the 2nd respondent herein and also taking note of the fact that the vehicle has been in the custody of the Tahsildar from 06.09.2019 onwards, this Court is of the view that the petitioner's vehicle shall be released on certain terms and conditions:

The Tahsildar, Mettur is directed to produce the vehicle before the concerned Jurisdictional Court within a week from the date of receipt of a copy of this order and on production of the said vehicle, the concerned Jurisdictional Magistrate shall return the vehicle bearing registration No. TN 52 V 3983 Mahindra Navistar Automotives Loading Tipper in the custody of the petitioner after complying with the following:

(i) The lower Court shall cause photographs of the vehicle to be taken and record panchanama thereof, the photographs taken shall be read as secondary evidence during trial and production of the vehicle shall be dispensed with.

(ii) The vehicle shall then be returned to the petitioner, who shall be at liberty to deal with the same in such manner as considered appropriate.

5. The above order is not determinant of the ownership or other rights in respect of the vehicle.

6. Accordingly, this criminal original petition is disposed of.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Karumalaikoodal Police Station,
Salem District.
2. The Assistant Geologist / Deputy Director
Geographical and Mines Department,
Salem.
3. The Public Prosecutor,
High Court, Madras.
4. The Tahsildar,
Mettur.
5. The Chief Judicial Magistrate,
Salem.
(Please forward this order copy to the
Judicial Magistrate concerned)

+1 cc to M/s.M.Subash, Advocate Sr.No. 90354

AKM/01.11.19/4P-7C /

Cr1.O.P.No.25109 of 2019

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