

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2019

CORAM :

THE HON'BLE MR.JUSTICE M.S.RAMESH

CrI.O.P.No.26277 of 2019

S.Kolappan

.. Petitioner

Vs.

1.The Superintendent of Police,
Cuddalore District,
Cuddalore.

2.The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.

... Respondents

PRAYER: The Criminal Original Petition is filed under Section 482 Cr.P.C. praying to direct the respondents to return the petitioner's Multi Axle Goods vehicle of Ashok Leyland Ltd make and bearing Registration Number TN 74 L 4385 within a reasonable time as fixed by this Court.

For Petitioner : Mr.K.Bommuraj

For Respondents: Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

This petition has been filed by the petitioner to direct the respondents to return his vehicle Multi Axle Goods of Ashok Leyland Ltd and bearing Registration Number TN 74 L 4385.

2. The petitioner submitted that he is the owner of Multi Axle Goods vehicle, make of Ashok Leyland Limited and Class of Tusker Super bearing Registration No.TN 74 L 4385 bearing Engine No.DPH445858, Chassis No.CPH I 18083 NP Colour and the said vehicle was used for transporting sand. On 27.01.2018, at 1.00 p.m., when the Assistant Engineer cross checked the online registration of the Taras bearing No. TN 74 L 4385, the driver of the Taras produced the vehicle R.C.Book and at that time, the Assistant Engineer came to know that the Engine Number of the vehicle was changed and the vehicle was involved in transporting the sand by producing wrong Engine Number. Hence, he lodged a

complaint before the second respondent. Based on his complaint, an First Information Report in Crime No.18 of 2018 on the file of the second respondent for offences under Sections 420, 468 of IPC and Section 21(1) of the Mines and Minerals (Development & Regulation) Act, 1957 has been registered and also seized the vehicle. He further submitted that he is appearing before the second respondent and also made request for return of vehicle but the same was denied by the second respondent. Hence, he has no other remedy except to approach this Court by way of the present petition.

3. Heard Mr.K.Bommuraj, learned counsel for the petitioner as well as Mr.C.Iyyapparaj, learned Additional Public Prosecutor, for the respondents.

4. The learned counsel for the petitioner would seek to impress upon this Court that a false case stands foisted upon the petitioner. This Court is now concerned with return of property, pure and simple.

5. 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."

6. In line with the above observations of the Hon'ble Supreme Court, it would be appropriate to order release of vehicle on the following conditions:

The second respondent police 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 viz., Multi Axle Goods vehicle of Ashok Leyland Ltd make and bearing Registration Number TN 74 L 4385 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.

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

8.With the above observations and directions, the Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vkrr

To

- 1.The Superintendent of Police,
Cuddalore District,
Cuddalore.
- 2.The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Bommuraj, Advocate sr.86023

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CrI.O.P. No.26277 of 2019

pm(co)
nr 22/11/2019

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