

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Cr1.O.P.No.28780 of 2019

Kumaresan

...Petitioner/Accused-3

Vs.

The Inspector of Police,
Maharajkadai Police Station,
Krishnagiri District.
(Crime No.235 of 2019)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to directing the learned Judicial Magistrate No.II, Krishnagiri, Krishnagiri District to accept the petition and ordered to return the petitioner's JCB bearing registration No.TN-29-AM-4264 seized by the respondent police in Crime No.235 of 2019.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

This petition has been filed by the petitioner to direct the learned Judicial Magistrate, No.II, Krishnagiri, Krishnagiri District to accept the petition and ordered to return the petitioner's JCB bearing registration No.TN-29-AM-4264 seized by the respondent police in Crime No.235 of 2019.

2.The learned counsel for the petitioner submitted that the JCB bearing registration No.TN-29-AM-4264 was seized by the respondent and a case was registered against him in Crime No. 235 of 2019 for the offence under Section 379 of IPC. He further submitted that he has no nexus with the said alleged offence and a false case has been foisted against him. He further submitted that he is appearing before the respondent and

also made request for return of vehicle but the same was denied by the respondent. Hence, he has no other remedy except to approach this Court by way of the present petition.

3. Heard Mr.E.Kannadasan, learned counsel for the petitioner as well as Mr.C.Iyapparaj, learned Additional Public Prosecutor for the respondent.

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 the light of the above observations, there shall be a direction to the respondent police to forthwith handover the JCB bearing registration No. TN-29-AM-4264 forthwith handover, in any event, within a period of one week from the date of receipt of a copy of this order and on such hand overing of the vehicle to the concerned Jurisdictional Court, thereafter, the petitioner shall be at liberty to move the concerned Judge seeking for return of the vehicle, such application shall be dealt with on its own merits and in accordance with law.

7. Accordingly, the Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Krishnagiri, Krishnagiri District.
2. The Inspector of Police,
Maharajkadai Police Station,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate sr.96309

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