



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Cr1.RC(MD)No.123 of 2018

Mokkaiah : Petitioner/Petitioner/3rd Party

Vs.

State rep. by its
The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District,
(Crime No. 846 of 2017)

: 1st respondent/1st Respondent/
Complainant

2.Pitchaimani

: 2nd Respondent/2nd Respondent/
Accused

Prayer: This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the order, dated 28.12.2017 made in Cr1.M.P.No.9508 of 2017 on the file of the Judicial Magistrate, Rajapalayam to release the interim Custody of the Petitioner's Vehicle namely Mahindra & Mahindra tractor bearing registration number TN-79-1362.

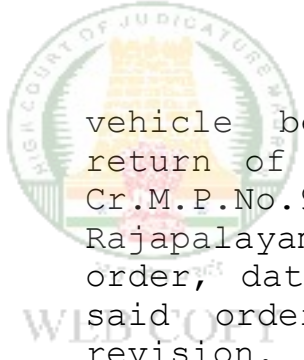
For Revision Petitioner : Mr.A.Balaji

For 1st Respondent : Mr.A.Robinson
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.J.Velpradeep

O R D E R

The petitioner claims to be the owner of the vehicle (Mahindra & Mahindra Tractor) bearing Registration No.TN-79-1362 and he let the said vehicle to one Rasu of Kamapatti village on rental basis for agricultural usage. The petitioner came to know that the said vehicle had been seized stating that it had been used for illegal sand mining by the brother of the said Rasu namely Pitchaimani. Thereafter, the 1st respondent registered a case in Crime No.846 of 2017 under Section 379 IPC r/w 4(1)(1-A) and 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 and produced the



vehicle before the Judicial Magistrate, Rajapalayam. Seeking return of the said vehicle, the petitioner filed a petition in Cr.M.P.No.9508 of 2017 before the learned Judicial Magistrate, Rajapalayam, for interim custody. The learned Magistrate, by order, dated 28.12.2017 has dismissed the same. Challenging the said order, the petitioner is before this Court with this revision.

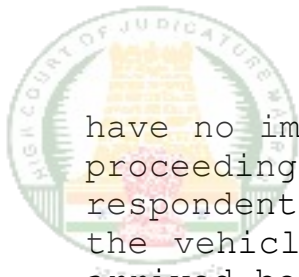
2.The learned counsel for the petitioner submitted that learned Judicial Magistrate, Rajapalayam has failed to ascertain the claim of the petitioner as only an interim arrangement as to the custody of the vehicle and not of the ownership and the interim custody of the vehicle in favour of the petitioner would not defeat the rights of the 2nd respondent, which stood on the disputed title of the vehicle and it is open to the 2nd respondent to prove his title before the competent court and prays for allowing the revision.

3.The learned Government Advocate (Criminal side) appearing for the 1st respondent submitted that the alleged vehicle was seized for the excavation of sand from Krishnaperi River and the vehicle is still in the custody of the 1st respondent and there is no proceedings pending against the vehicle under the Mines and Minerals (Development and Regulation) Act, 1957.

4.The learned counsel appearing for the 2nd respondent submitted that the learned Judicial Magistrate, Rajapalayam had dismissed the petition filed by the petitioner as well as the claim of the 2nd respondent in view of the rival claims of the parties and admittedly, there was a money transaction between the petitioner and the 2nd respondent in respect of the vehicle and it was purely a part of the business affairs and now the money dispute between them in respect of the vehicle is now being settled out of the court by amicable settlement and there is no dispute pending between us in respect of the title of the vehicle and the 2nd respondent had no objection to hand over the interim custody of the vehicle in favour of the petitioner in view of the settlement arrived between them.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.The only ground upon which the lower court has dismissed the petition is that there is a rival claim between the petitioner and the 2nd respondent with regard to the ownership of the vehicle, as against the vehicle in question. According to the lower court, since such proceeding was pending, the petition for interim custody of the vehicle is not maintainable. The view taken by the lower court is not correct. It is well settled that during the pendency of confiscation proceeding, the vehicle needs to be returned to the person, who is entitled to have. This return will



have no impact on the confiscation proceeding, as the confiscation proceeding is an independent proceeding. Further, the 2nd respondent had no objection to hand over the interim custody of the vehicle in favour of the petitioner in view of the settlement arrived between them.

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7. In view of the above, this revision is **allowed** and the order of the learned Magistrate, Rajapalayam in CrI.M.P.No.9508 of 2017, dated 28.12.2017 is set aside. The learned Magistrate is directed to return the vehicle to the petitioner on the following conditions:-

(a) The petitioner shall deposit the original Registration Certificate of the vehicle;

(c) The petitioner shall not make any alteration of the vehicle;

(d) The petitioner shall produce the same before the Court as and when required, until final order is passed in the confiscation proceedings.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Judicial Magistrate, Rajapalayam.

2. The Inspector of Police,
Rajapalayam South Police Station,
Rajapalayam.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.BALAJI, Advocate (SR-57293[F] dated 28/03/2019)

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Order made in
CrI.R.C (MD) No.123 of 2018
27.03.2019