

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 13.03.2020

Pronounced on : 12.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.RC.No.276 of 2020

Anburaj

...Petitioner

Vs.

State rep. By the
Inspector of Police,
Tiruvarur Town Police Station,
Tiruvarur District.
(Cr.No.385 of 2019)
Respondent

..

Prayer: Criminal Revision Case is filed under Section 397 r/w. 409 of the Code of Criminal Procedure to call for the records in Crl.MP.No.3043 of 2019 on the file of Principal Sessions Judge, Tiruvarur and set aside the same subsequently grant interim custody of vehicle Mahendra Tractor bearing Regn.No.TN 49 J 3054 with unnumbered Tipper to the petitioner.

For Petitioner : Mr.M. Subash

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate

(Crl.Side)

ORDER

This Criminal Revision Case has been filed against the dismissal of the petition filed by the petitioner in Crl.MP.No.3043 of 2019 on the file of the Principal Sessions Judge, Tiruvarur dated 29.01.2020.

2. The respondent herein has seized a Mahendra Tractor bearing Regn.No.TN 49 J 3054 with unnumbered Tipper as river sand has been illegally transported through the said vehicle and also registered an FIR on 20.10.2019 in Cr.No.385 of 2019 under Sections 379 and 21(1) of IPC.

3. The petitioner herein has filed a petition under Sections 457 and 451 of Cr.P.C., before the Principal Sessions Judge, Tiruvarur {Special Court constituted under Mines and Minerals (Development and Regulation) Act, 1957} seeking interim custody. The learned Principal Sessions Judge, Tiruvarur, has taken the said

petition on file as Crl.MP.No.3043 of 2019 and dismissed the same by the order dated 29.01.2020. Aggrieved by the same, the petitioner has filed the present criminal revision case.

4. The learned counsel for the petitioner has submitted that the petitioner is the owner of the aforesaid vehicle and the same has been falsely implicated in the above case. He further submitted that the Sub-Inspector of Police attached to the respondent police Station has seized the said vehicle and also arrested the petitioner on 20.10.2019 and produced before the Judicial Magistrate, Thiruvarur and remanded to judicial custody. He further submitted that the petitioner, after coming out on bail, he has filed a petition in Crl.MP.No.3043 of 2019 before the Principal Sessions Judge, Thiruvarur seeking interim custody of the said vehicle, but the learned Principal Sessions Judge, Thiruvarur, has dismissed the said petition stating that in the FIR, the petitioner's name has been mentioned as Anandharaj S/o.Ragul. He further submitted that in the FIR also, the petitioner's name has been mentioned as Anburaj. He further submitted that neither the respondent police nor the revenue officials have initiated any steps for confiscating the said vehicle. Under the said circumstances, the learned Principal Sessions Judge, ought not to have dismissed the petition. He further submitted that if the vehicle is kept in idle and exposed to sun and rain, it would get deteriorated and therefore, he prayed to set aside the order passed by the learned Principal Sessions Judge, Tiruvarur and direct to release the said vehicle for interim custody.

5. The learned counsel for the petitioner in support of his contention, relied upon the following decisions:

1) Sunderbhai Ambalal Desai vs State Of Gujarat MANU/SC/1110/2002 AIR 2003 638

2) N.Ramamirtham Vs. State rep. By Inspector of Police, Koradachery Police Station, Tiruvarur District, Crl.RC.No.737 of 2019 dated 13.08.2019

3) V. Gopi Vs. The District Collector, Vellore District (WP.No.11252 of 2019 dated 24.04.2019)

6. The respondent has filed a counter stating that on 20.10.2019 at about 7.00 a.m., on Tr.T. Baratha Nehru, the Sub-Inspector of Police, on information, along with his police party went to Valavaikal Junction, Thiruvarur and conducted routine vehicles check up and found that the petitioner/accused illegally carried one unit river sand without any valid permit in his Mahendra Tractor bearing Reg.No.TN49-J-3094 with a unnumbered Tipper. Thereafter, the above said vehicle was seized by the said Sub-Inspector of Police and also arrested the petitioner/accused and recorded his statement and brought to the police station and registered an FIR in Crime No.385 of 2019 under Section 379 of IPC and 21(1) of Mines and Minerals (Development & Regulation) Act, 1957 on 20.10.2019 at 10.00 a.m., and produced the petitioner/accused before the Judicial Magistrate, Thiruvarur and he was remanded to judicial custody. The properties also produced before the said court and the same were taken on file vide C.P.No.5

of 2020 dated 23.01.2020. He further stated in his counter that at the time of arrest, the accused i.e., Anandaraj purposely gave his name as Anburaj, so, the Sub-Inspector of Police shown the accused's name as Anburaj in the FIR. But during investigation, it was found that the accused's name is only Anandaraj and after knowing the same in the FIR, accused's name has been corrected as Anandaraj. He further stated that taking into consideration of the said fact, the learned Principal Sessions Judge has rightly dismissed the petition and therefore, he prayed to dismiss this Criminal Revision Case.

7. Per contra, Mr.T.Shanmuga Rajeswaran, learned Government Advocate (Crl.Side) has submitted that the Division Bench of this court in Muthu Vs. The District Collector, Pudukottai District, and others (W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018) has held that as per Section 21 (4) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act') deals with the power to seize any vehicle, equipment or tool involved in illicit mining by an officer or an authority specially empowered. As per Section 21(4-A), such a vehicle, equipment, tool or mineral shall be liable to be confiscated by the order of the Court, competent to take cognizance. He further submitted that the same view has been reiterated in Review Application No.80 of 2019 in WP(MD)No.19936 of 2017 dated 09.09.2019. He further submitted that in view of the aforesaid decisions of the Division Bench of this court, the vehicle involved in this case is liable to be confiscated. He further submitted that the respondent police is taking steps for confiscating the vehicle and therefore, he prayed to dismiss the Criminal Revision Case.

8. In the FIR, it is stated that the petitioner herein has driven the Mahendra Tractor bearing Regn.No.TN 49 J 3054, with an unnumber Tipper in which the petitioner herein has illegally transported the river sand. In the counter also, it is stated tht it was the petitioner who illegally carried river sand in his Mahendra Tractor bearing Reg.No.TN49 J 3054 with an unnumbered Tipper. It is also stated in the counter that the petitioner herein was arrested and remanded to judicial custody. But in one place, i.e., in para-7 of the counter, the respondent has stated that at the time of arrest, the accused i.e., Anandaraj, purposely gave his name as Anburaj and based on the same, the Sub-Inspector of Police, has mentioned the accused's name as Anburaj in FIR. But he again stated that during investigation, the petitioner/accused disclosed his original name.

9.It is to be pointed out that throughout the counter, the respondent has stated that the petitioner herein is the accused in the above crime number except in one place. He has not stated that the petitioner herein is not the accused and it was only his brother Anandaraj is the accused. Admittedly, the petitioner herein was arrested on the spot and he was sent to remand. R.C for the said vehicle also stands in the name of the petitioner. Therefore, there is no dispute with regard to the identity of the accused or owner of the vehicle. It appears that after remanding the petitioner, the Sub-Inspector of Police entertained a doubt with regard to the

identity of the owner and accused and hence he made a correction in the FIR, but it is not known whether the said fact was informed to the concerned Magistrate or before the concerned court at the time of moving bail application by the accused. Anyhow, the petitioner himself has shown him as accused in the petition filed in CrI.MP.No.3043 of 2019 and also in this Criminal Revision Case. The respondent also has not disputed the fact that the petitioner is the accused. Under the said circumstances, the learned Principal Sessions Judge, Thiruvavur should not have dismissed the petition on the ground, that the petitioner's name has been mentioned as Anandaraj in FIR.

10. In Muthu Vs. The District Collector, Pudukottai District, and others, (cited supra), the Division Bench of this court in paragraph Nos.7, 8, 11 and 12 has observed as follows:

'7. Section 21(4) of the Act deals with the power to seize any vehicle, equipment or tool involved in illicit mining by an officer or an authority specially empowered. As per Section 21(4-A), such a vehicle, equipment, tool or mineral shall be liable to be confiscated by the order of the Court, competent to take cognizance. We may note Section 21(4-A) of the Act consciously uses the word 'shall' while dealing with confiscation. Therefore, if the Court concerned is of the view that any vehicle, mineral, tool, equipment or any other things seized, is involved with any violation, then, it has to be followed by confiscation and disposal.

8. Section 30-B of the Act specifies the Court which can take cognizance. Therefore, whenever a vehicle is seized for contravention and whenever mineral is also seized, the only option open to the authority is to file a private complaint as mandated under Section 30-B. Therefore, there is no power or authority that lies with the revenue officials to release the vehicle after seizure.

There is a difference between a power exercised for seizure and confiscation. While the statute provides for power to seize by a revenue authority, it does not provide so, for confiscation, which is specifically assigned to the jurisdictional Court, which assumes it on a complaint made by an authorised officer. As stated above, this position applied to all instruments, machineries, vehicle and the mineral.

11. Having come to the aforesaid conclusion, we deem it appropriate to direct all the revenue officials to make a complaint after the seizure to the jurisdictional Court. A complaint has to be made immediately after seizure, preferably, within a period of one week. Thereafter, appropriate application can be made for confiscation, which might include a vehicle, said to have been involved.

12.As held by the Hon'ble Apex Court, which dictum is followed by this Court, there is no bar for the police to register a case for the offence under Section 379 IPC along with the offence under the Mines and Minerals (Development and Regulation) Act, 1957. Whenever an offence is registered under Section 379 IPC, it will not take away the power of the revenue officials to give a private complaint. As this position is settled, we direct the revenue officials to inform the police about the seizure made and in the same way, as and when a case is registered under Section 379 IPC, the police concerned shall inform it to the revenue officials.

Therefore, a complaint has to be made by the revenue officials before the jurisdictional Court and on information, case has to be registered by the jurisdictional police. This procedure will have to be followed strictly.''

11. From the aforesaid decision, it is clear that as per Section 21 (4) of the MMDR Act, the concerned Officer/Authority is having power to seize any vehicle, equipment or tool involved in illicit mining. As per Section 21(4-A) of the MMDR Act, such a vehicle or equipment or tool or mineral shall be liable to be confiscated by the order of the court competent to take cognizance. If the court concerned is of the view that any vehicle, mineral, tool, equipment or any other things seized, is involved with any violation, then, it has to be followed by confiscation and disposal; Further, it is clear that there is no bar for the police to register a case for the offence under Section 379 of IPC along with the offence under the MMDR Act. Whenever an offence is registered under Section 379 of IPC, it will not take away the power of the revenue officials to file a private complaint. Further, whenever a vehicle is seized by the revenue officials, they have to inform the police about the seizure made by them and in the same way, as and when a case is registered under Section 379 of IPC, the police concerned shall inform it to the revenue officials. Thereafter, a complaint has to be made by the revenue officials before the jurisdictional court within a week and also they shall produce the said vehicle before the jurisdiction court. Thereafter, an appropriate application shall be filed for confiscation.

12. The same Division Bench while dealing with the Review Application No.80 of 2019 in WP(MD)No.19936 of 2017 has issued, interalia, the following directions:-

''(ii) The designated Courts are directed to deal with the question of confiscation or release of the vehicles on receipt of the private complaint or seizure report from the person authorized, notwithstanding the exercise of power of compounding. The persons authorized are directed to comply with the earlier directions with reference to making the private complaints.

(iii) Whenever the vehicles/materials seized are produced before the Court for confiscation proceedings, the Courts concerned shall take photographs of the vehicle/material and keep the same in file and shall proceed to sell the vehicle/material by public auction after getting valuation report from the Motor Vehicle Inspector of the District concerned (or) the authorities concerned and shall issue sale certificate to the successful bidder and deposit the sale price to the credit of the particular case. In the event, confiscation is ordered by the trial Court, the amount shall be confiscated to the Government.

(iv) If the designated Court comes to the conclusion that the vehicle/material is not liable to be confiscated, the same shall be returned to the parties who are legally entitled to.''

13. A combined reading of the original order passed by the Division Bench in W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018 and order passed in Review Application No.80 of 2019 in WP(MD)No.19936 of 2017 dated 09.09.2019 would show that if an FIR is registered by the police under Section 379 of IPC, it has to inform the said fact to the concerned revenue officials and on such information, the concerned revenue officials have to file a private complaint within a week and also produce the vehicle before the concerned court and thereafter an application shall be filed before the concerned court for confiscating the said vehicle and other materials. Thereafter the designated court has to dispose of the said application either to order confiscation of the said vehicle and other materials or to return the vehicle and other materials.

14. Admittedly, in this case, so far the concerned authority/revenue officials have not filed any private complaint and also have not filed any application before the designated court seeking to confiscate the said vehicle and other materials.

15. In *Sunderbhai Ambalal Desai vs State Of Gujarat* (cited supra), the Hon'ble Supreme Court in paragraph No.17 has held as follows:

'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.''

16. In *N.Ramamirtham Vs. State rep. By Inspector of Police, Koradachery Police Station, Tiruvarur District*, (cited <https://hcservices.ecourts.gov.in/hcservices/>)

supra), this court after referring to the guidelines given by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai vs State Of Gujarat*, (cited supra), has directed the respondent police to return the vehicle by imposing certain conditions.

17. In *V. Gopi Vs. The District Collector, Vellore District* and another, (cited supra), another Division Bench of this court in paragraph No.5 has held as follows:

'5. In any event, as the vehicle is under the custody of the respondents from the date of seizure and considering the fact that if the same is allowed to be kept idle by exposing the same to rain and shine, it would certainly diminish their value, this Court is of the view that the vehicle in question may be released by imposing conditions on the petitioner. ''

18. By following the aforesaid decisions, this court is inclined to direct the designated court to return the vehicle for interim custody by imposing stringent conditions.

19. Accordingly, the respondent is directed to release the vehicle in question to the petitioner within a period of 7 days from the date of compliance of the below mentioned conditions:

(i) The petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) before the jurisdictional Tahsildar concerned as non-refundable deposit. After receipt of the above said amount, the same will have to be deposited by the jurisdictional Tahsildar concerned, 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/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the Principal Sessions Judge, Tiruvarur.

(iii) The petitioner shall give an undertaking before the respondents/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 respondents and also the trial Court, failing which the respondents/trial Court is/are 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 is also directed to participate in the enquiry to be conducted by the respondent.

(vi) The petitioner shall surrender the original R.C. Book before the District and Sessions Judge,

***Thiruvavarur.**

(vii) Petition relating to return of R.C. Book for any purpose in the future may be filed before the District and Sessions Judge, ***Thiruvarur** who may consider the same on merits, though this order has been passed by the High Court.

20. It is made clear that the handing over of the vehicle to the petitioner for interim custody shall not stand in the way of initiating confiscation proceedings.

21. In the result, this Petition is allowed in the above terms.

Sd/-
Asst.Registrar (CS III)

***Corrected as per order
of this court dated 10.11.2020
in Cr1.RC.No.276/2020
-s/d-
Assistant Registrar
dt 18.11.2020**

/true copy/

Sub Asst. Registrar

To

1. The Inspector of Police, **To be Substituted the order
already despatched on 29.07.2020**
Tiruvarur Town Police Station,
Tiruvarur District.
(Cr.No.385 of 2019)

2. The Principal Sessions Judge,
***Thiruvarur.**

3. The Public Prosecutor,
High Court, Madras.

Mr (co)
krd 8/7
aa18/11/2020

CRL.RC.No.276 of 2020