

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 10.03.2020

Pronounced on : 12.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.RC.No.299 of 2020

Alibu Ahamed

...Petitioner

Vs.

State rep. By the
Inspector of Police,
Kilvelur Police Station,
Nagapattinam District

...Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of the Code of Criminal Procedure to call for the records and set aside the order passed in Crl.MP.No.134 of 2020 on the file of the District and Sessions Judge, Nagapattinam in Cr.No.598 of 2019 on the file of the respondent dated 09.01.2020 and direct the respondent to release the Tractor along with tipper bearing registration No.TN 51 D 7729.

For Petitioner : Mr.J.Jawahar

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor
Assisted by
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.134 of 2020 on the file of the District and Sessions Judge, Nagapattinam dated 09.01.2020.

2. The respondent herein has seized a tractor bearing Regn.No.TN 51 D 7729 along with a Tipper (Trailer) as river sand has been illegally transported through the said vehicle and also registered an FIR on 14.12.2019 in Cr.No.598 of 2019 under Sections 379 and 430 of IPC.

3. The petitioner herein has filed a petition under Sections 457 and 451 of Cr.P.C., before the District and Sessions Court, Nagapattinam {Special Court constituted under Mines and Minerals (Development and Regulation) Act, 1957} seeking interim custody. The learned District and Sessions Judge, Nagapattinam, has taken the said petition on file as Crl.MP.No.134 of 2020 and dismissed the same by the order dated 09.01.2020. 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 he entrusted the said vehicle with his driver but he does not know that the said vehicle was used for illegal transportation of sand. He further submitted that the aforesaid occurrence took place without the knowledge of the petitioner. He further submitted that the respondent has seized the said vehicle on 14.12.2019 and hence, the petitioner has filed a petition before the District and Sessions Judge, Nagapattinam in Crl.MP.No.134 of 2020 seeking interim custody, but the learned District and Sessions Judge has dismissed the said petition stating that the said vehicle has to be confiscated. 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 District and 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 District and Sessions Judge, Nagapattinam 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. Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor assisted by 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 and hence, the learned District and Sessions Judge, Nagapattinam, has rightly dismissed the petition filed by the petitioner seeking interim custody of the vehicle and directed the police to initiate confiscation proceedings. Accordingly, the respondent police is taking steps for confiscating vehicle and therefore, he prayed to dismiss the criminal revision case.

7. 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.'

8. 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.

9. 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.''

10. 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.

11. 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.

12. 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."

13. In *N.Ramamirtham Vs. State rep. By Inspector of Police, Koradachery Police Station, Tiruvarur District*, (cited 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.

14. 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. "

15. 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.

16. 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 District and Sessions Judge, Nagapattinam.

(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, Nagapattinam.

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

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

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

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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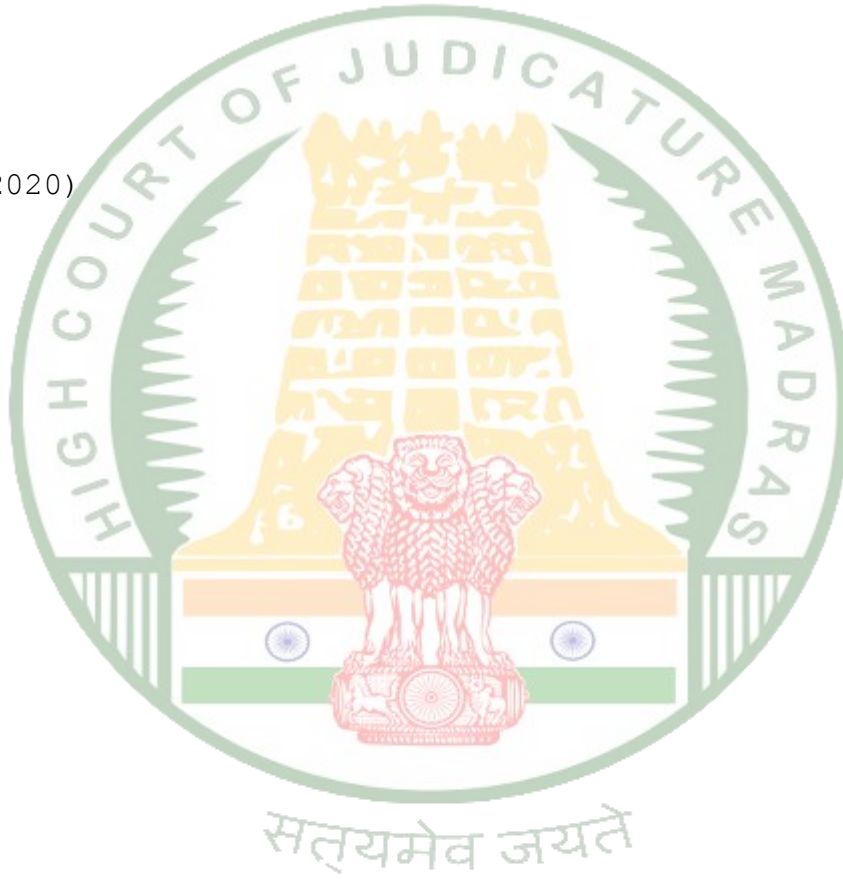
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1. The Inspector of Police,
Kilvelur Police Station,
Nagapattinam District.
2. The District and Sessions Judge,
Nagapattinam.

3. The Public Prosecutor,
High Court, Madras.

Pre-delivery Order made in
CRL.RC.No.299 of 2020

MR (CO)
GS (03/08/2020)



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