

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2020

CORAM:

THE HONOURABLE Mr. JUSTICE P. RAJAMANICKAM

Crl. R.C. No. 436 of 2020

Rajeswari

... Petitioner/Appellant

-vs-

The state rep by,
The Inspector of Police,
Kariyapattinam Police Station,
Nagapattinam District Respondent/Respondent
(Crime No.16/2020)

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, 1973, to call for the records relating to the order dated 27.02.2020 passed by the learned District and Sessions Judge, Nagapattinam in Cr.M.P.No.729/2020 and set aside the same.

For Petitioner : Mr. G.Magesh Kumar

For Respondent : Mr. T. Shunmugarajeswaran
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Petition has been filed against the dismissal of the petition filed by the Petitioner in Cr. M.P. No. 729 of 2020 dated 27.02.2020 on the file of the learned District and Sessions Judge, Nagapattinam.

2. The case of the prosecution is that on 17.02.2020 at about 10.30 a.m., one Mr. T.Manohar, Village Administrative Officer, 26 Chettipulam, near Ellaikarai Road, found that one Udayakumar has illegally transported sand through SWARAJ 735 FE Tractor without Registration Number. Hence, he seized the said vehicle and handed over to the Respondent Police on 17.02.2020 itself and also lodged a complaint, the Respondent Police was requested to register the case. In view of the same, the Respondent Police has registered a case in Crime No. 16/2020 under Section 379 of I.P.C and Section 21(1) of the Mines and

Minerals (Development & Regulation) Act, 1957.

3. The Petitioner herein has filed a petition under Sections 451 and 457 of Cr.P.C., in Cr. M.P. No. 729 of 2020 on the file of the District and Sessions Judge, Nagapattinam seeking interim custody of the Tractor without Registration Number. The learned District and Sessions Judge, Nagapattinam has dismissed the said petition by the order dated 27.02.2020. Challenging the said order, 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 Tractor and he is a native of Vedaranyam Taluk, Nagapattinam District. He further submitted that the Petitioner did not know about what had happened on the particular date. He further submitted that even assuming that river sand was transported in the lorry of the Petitioner, for that the Petitioner cannot be held liable and the vehicle of the Petitioner also cannot be seized. He further submitted that the Petitioner is not connected with the aforesaid crime. He further submitted that if the vehicle is exposed to sun and rain resulting in the deterioration of its condition and therefore, he prayed to set aside the order passed by the learned District and Sessions Judge, Nagapattinam and grant interim custody of the said vehicle to the Petitioner. The learned counsel for the petitioner has filed R.C. book through E-Mail in which Reg.No. for the said Tractor has been mentioned as TN-51-AL-1266.

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. R.C. No. 737 of 2019 dated 13.08.2019)
- 3) V. Gopi -vs- The District Collector, Vellore District (W.P. No. 11252 of 2019 dated 24.04.2019)

6. Per contra, Mr. T. Shanmugarajeswaran, learned Government Advocate (Criminal 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 Section 21(4) of the 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 W.P. (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.

7. In the FIR, it is stated that in the Tractor without Registration Number, river sand has been illegally transported.

8. 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.''

9. 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 I.P.C. along with the offence under the MMDR Act. Whenever an offence is registered under Section 379 of I.P.C., 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 I.P.C., 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.

10. The same Division Bench while dealing with the Review Application No. 80 of 2019 in W.P. (MD) No. 19936 of 2017 has issued, inter alia, 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.''

11. 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 W.P. (MD) No. 19936 of 2017 dated 09.09.2019 would show that if an F.I.R. is registered by the police under Section 379 of I.P.C., 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.

12. 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.

13. 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.'

14. 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.

15. 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.'

16. 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.

17. Accordingly, the designated Court/District and Sessions Court 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.30,000/- (Rupees Thirty 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 District and Sessions Judge, Nagapattinam 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.

(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/authority concerned.

(vi) The Petitioner shall surrender the original R.C. Book before the District and Sessions Judge, Nagapattinam to prove her ownership.

(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.

18. 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.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Judge,
District and Sessions Court,
Nagapattinam.

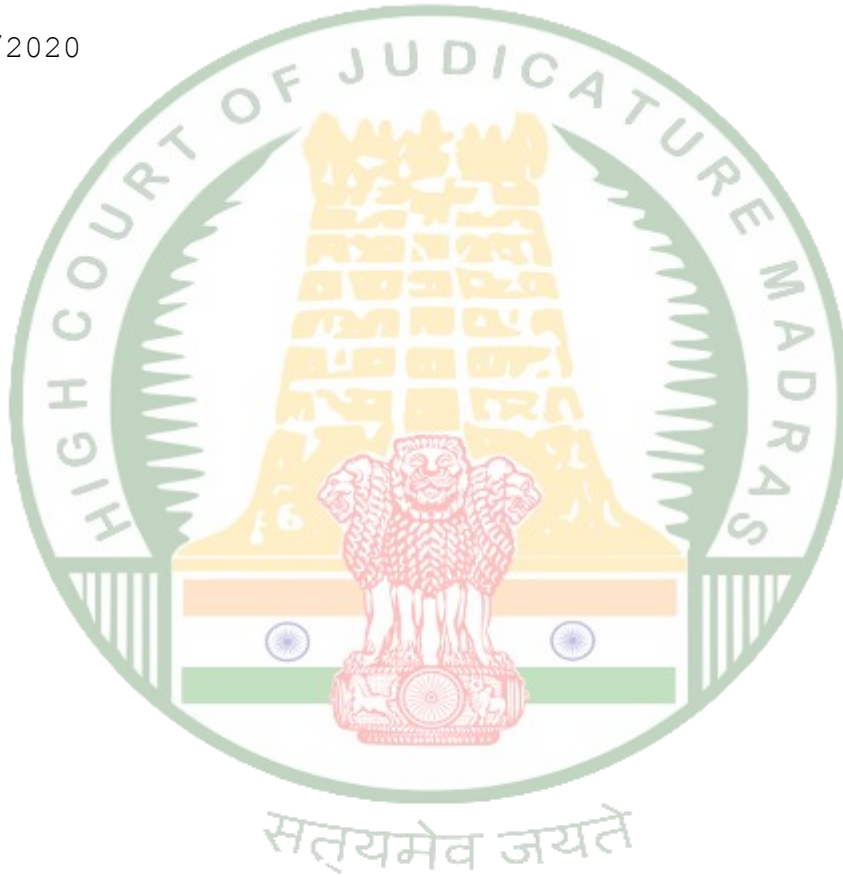
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2. The Inspector of Police,
Kariyapattinam Police Station,
Nagapattinam District.
(Crime No.16/2020).

3. The Public Prosecutor
High Court, Madras.

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