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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.R.C.No.336 of 2022

J.Muthukumarasamy

...Petitioner

versus

The State

Represented by

The Inspector of Police,
Thiruvenkadu Police Station,
Mayiladuthurai District.
(Crime No.598 of 2021)

...Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of the Code of Criminal Procedure, praying to set aside the order of the learned District and Sessions Judge, Nagapattinam in Cr.M.P.No.2501 of 2021 dated 27.08.2021 and allow this Petition.

For Petitioner : Mr.M.R.Kuyilan

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Cr1.Side)

O R D E R

The present Criminal Revision Case has been filed praying to set aside the order dated 27.08.2021 made in Cr.M.P.No.2501 of 2021 on the file of the learned District and Sessions Judge, Nagapattinam.

2.The petitioner is the owner of JCB bearing Registration No.TN-82-X-9649. In a case registered in Crime No.598 of 2021 under Section 379 of IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 the respondent police, while at the time of investigation, recovered the said vehicle and as of now, the same is in the custody of the respondent police.

3.Pending investigation, the petitioner filed a petition in Cr.M.P.No.2501 of 2021 before the learned District



and Sessions Judge, Nagapattinam, praying for return of the vehicle.

4.The learned District and Sessions Judge, Nagapattinam, by order dated 27.08.2021 dismissed the said petition on the ground that, in respect of the said vehicle, already confiscation proceedings are initiated and hence, the relief sought for by the petitioner cannot be sustained. Challenging the said dismissal order, the present revision petition has been filed.

5.The learned counsel appearing for the revision petitioner would submit that the petitioner is not an accused and also he is not having any knowledge in respect to the seizure of vehicle. He has further added that at the time of occurrence, without the knowledge of the petitioner, the accused took the vehicle and committed the alleged occurrence and hence, the petitioner is no way held responsible for the alleged occurrence. Further, if the petition mentioned vehicle is exposed in the sunlight, the value of the vehicle become depreciated and therefore, this petition has been filed praying for return of the vehicle, by setting aside the order dated 27.08.2021 made in Cr.M.P.No.2501 of 2021.

6.Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police would contend that in respect to the petition mentioned vehicle, already confiscation proceedings are initiated and hence, the property now stated in the petition shall not be given to the petitioner.

7.Now, on going through the rival submissions made by the learned counsel appearing on either side with relevant records, it is true that the petitioner is not arrayed as an accused in the above referred case. However, on going through the nature of offence committed in the petition mentioned case, during the relevant point of time, the petition mentioned vehicle was used for transporting the river sand, which is violative of Section 21(1) of the Mines and Minerals (Development and Regulation) Act. Further, the learned Government Advocate (Crl. Side) appearing for the respondent police contended that, now confiscation proceedings are initiated. In this occasion, it would necessary to see whether the petitioner being the third party entitled to receive the petition mentioned property for interim custody. In this regard, it would necessary and useful to see the judgment dated 29.10.2018 passed by the Division Bench of this Court in W.P. (MD)No.19936 of 2017 wherein, it has observed as follows:

"2.Taking note of the prevailing situation, we have passed the following order on 24.09.2018:



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"We have perused the report filed by the third respondent District Collector, Pudukkottai. From the submissions made on both sides, we are satisfied that not only in the place, which is subject matter of writ petition, but also in the entire State indiscriminately mining is going on illegally by using vehicles and bullock carts. The action taken is far and few. We are afraid to say that even this is mainly restricted to only imposing of fine. The vehicles involved are either released by the official respondents or by the Courts. Every thing has become a part of the routine transaction. The action taken so far has not yielded any result. Sand in the present form takes thousands of years. Removal of the sand will lead to the destruction of the rivers. At this speed, we may lose the rivers once for all. A report of NITI Aayog - a Government Think Tank, indicates that by 2050 there will not be any water for the entire State. 21 cities including Chennai will run out of ground water affecting about 100 million people. The aforesaid situation is the stock reality borne out of the greed of the man. May be, the generation next might see water only in bottle. Day in and day out we are forced to deal with such cases. However, illegal mining goes on unchecked under our nose. This is the reality."

8. Further, in the same judgment, it has held 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."

9. Now, applying the ratio laid down in the above referred judgments, herein also, being the reason that already confiscation proceedings are started allowing this revision petition would futile the entire process of confiscation. Further, Section 21 (4-A) of the Mines and Minerals (Development and Regulation) Act, reads as follows;

"Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to



be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such Court."

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10. Therefore, in the light of the above discussions stated supra, being the reason that the property recovered under the provisions of Mines and Minerals (Development and Regulation) Act, has to be mandatorily confiscated by an order of the Court competent to take cognizance, it would not necessary to pass a positive order in this Revision Case. Accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sri

To

1. The District and Sessions Judge,
Nagapattinam.
2. The Inspector of Police,
Thiruvenkadu Police Station,
Mayiladuthurai District.
3. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.M.R.Kuyilan, Advocate, S.R.No.20820

Cr1.R.C.No.336 of 2022

PMK (CO)
RGA (06/04/2022)