



WEB COPY



Crl.R.C.No.1667 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.1667 of 2022

Sanjai Gandhi @ Sanjeev Gandhi
Petitioner

...

Vs.

The State rep. by its Station House Officer,
Thirunavalur Police Station,
Kallakurichi District.
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records pertaining of order in Crl.M.P.No.4555 of 2022 dated 25.11.2022 passed by the Judicial Magistrate No.II, Ulundurpet to set aside the same by allowing the revision petition and return the Tipper BSIV Vehicle bearing registration No. TN 61 P 5694 (Engine No.JFEZ 409510) to the petitioner/owner of vehicle.

For Petitioner : Mr.B.Abdul Samath



Crl.R.C.No.1667 of 2022

WEB COPY

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 25.11.2022 passed in Crl.M.P.No.4555 of 2022 by the Judicial Magistrate No.II, Ulundurpet and return the Tipper BSIV Vehicle bearing registration No. TN 61 P 5694 (Engine No.JFEZ 409510) to the petitioner/owner of vehicle.

2. It is the case of the prosecution that on 10.10.2022, at about 11.15 am., while the Assistant Geologist, Divisional Flying Squad, Geography Mining, Villupuram, doing their surveillance duty along with the officials, they found that some persons loading gravel sand in a Tipper lorry bearing registration No.TN 61 P 5694, using JCB vehicle bearing registration No.15 B 9050 and when they tried to caught the driver of the Tipper lorry, he escaped from the scene of occurrence. Therefore, a case in Crime No.445 of 2022 was registered under Section 379 of Indian Penal Code, 21(1) of Mines and Mineral (Development and Regulation) Act, 1957 and the



Crl.R.C.No.1667 of 2022

vehicles were seized.

3. The learned counsel for the petitioner submitted that the petitioner is the owner of Tipper lorry bearing registration No.TN 61 P 5694. He further submitted that the petitioner was not present in the scene of occurrence and also, he has not committed the offence of sand theft, however, the respondent police has foisted a false case against him.

4. The learned counsel further submitted that, the petitioner filed a petition in Crl.M.P.No.4555 of 2022 before the Trial Court to return the vehicle to him, however, it was dismissed, vide order dated 25.11.2022 by the Trial Court, on the ground that the petition, relating to return of vehicle involved in Mines and Minerals theft, is not maintainable before the Magistrate. It is the contention of the learned counsel that, no purpose will be served in keeping the vehicle under the custody of respondent police and if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle. He further submitted that the vehicle is not involved in any case similar in nature and the petitioner is ready to give appropriate



Crl.R.C.No.1667 of 2022

guarantee as well as security for return of vehicle and also he will produce the vehicle, as and when required either before the respondent police or before the Trial Court. Hence, he prayed to return the vehicle to the petitioner.

5. The learned Government Advocate (Crl.Side) submitted that, at the time of registering the case, the petitioner was not an accused. He further submitted that the driver of the Tipper lorry escaped from the scene of occurrence and the Tipper lorry was seized by the respondent police with 2 units of sand and since the petitioner is the owner of the vehicle, objected to return the vehicle to him.

6. Heard the learned counsel appearing for the petitioner and the respondent and I have perused the materials on record.

7. A perusal of the records shows that, the respondent police registered a case in Crime No.445 of 2022 for the offence under Section 379



Crl.R.C.No.1667 of 2022

of Indian Penal Code, 21(1) of Mines and Minerals (Development and Regulation) Act with regard to sand theft. Further, it reveals from the records that the petitioner is not an accused in this case and he is the owner of the Tipper lorry bearing Registration No.TN-61-P-5694 and it was seized by the respondent police with two units of sand. The Trial Court dismissed the petition in Crl.M.P.No.4555 of 2022, filed by the petitioner, on the ground that the petition, relating to return of vehicle involved in Mines and Minerals theft, is not maintainable before the Magistrate. It is the contention of the learned counsel for the petitioner that the petitioner is ready to give guarantee and security for returning the vehicle and if the vehicle is being kept idle in open space, it would cause damage to the vehicle.

8. At this juncture, it is relevant to rely upon a decision of the ***Hon'ble Supreme Court in Sunderbhai Ambalal Desai and others Vs. State of Gujarat in Special Lave Petition (Crl.)2745 of 2022 dated 01.10.2002*** and the relevant portion is extracted hereunder.



Crl.R.C.No.1667 of 2022

WEB COPY

Vehicles

17. 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.

*18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company, then insurance company be informed by the Court to take possession of the vehicle, which is not claimed by the owner or a third person. If insurance Company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. **In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.***

Therefore, as per the ratio laid down by the Hon'ble Apex Court, this Court is of the view that, keeping the vehicle idle in the open space, will diminish its nature and lost its value and no purpose will be served. As such,



Crl.R.C.No.1667 of 2022

considering the nature of offence and also taking into account the fact that the vehicle is not involved in any other case similar in nature, this Court is inclined to allow the Revision Petition.

9. Accordingly, this Criminal Original Petition is allowed and the impugned order passed by the Trial Court is set aside. The respondent police is directed to return the vehicle to the owner of the vehicle on the following conditions.

- i. the petitioner shall prove his ownership of the vehicle by producing the R.C.Book and other relevant records;
- ii. the petitioner shall not alienate or encumber the vehicle in any manner;
- iii. the petitioner shall execute a bond for a sum of Rs.5,00,000/- (Rupees five lakhs only) before the Judicial Magistrate-II, Ulundurpet.
- iv. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future,



Crl.R.C.No.1667 of 2022

WEB COPY

- v. the petitioner shall take photograph of the vehicle; and
- vi.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

23.12.2022

Index: Yes/No
Internet: Yes/No
mst

To

1. Judicial Magistrate No.II, Ulundurpet.
2. Station House Officer, Thirunavalur Police Station, Kallakurichi.
3. The Public Prosecutor, Madras High Court.



WEB COPY



Crl.R.C.No.1667 of 2022

V.SIVAGNANAM, J.,

mst

Crl.RC No.1667 of 2022

23.12.2022