



Crl.R.C.No.324 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.324 OF 2023

Sekar
(claims to be the owner of JCB
Backhoe Loader with Cabin
bearing Regn.No.TN 51 AL 3083

.. Petitioner

Vs

The Inspector of Police,
Voimedu Police Station,
(amended a per order dated
2.3.2023 in Crl.M.P.No.3753/2023
Nagapattinam District.
Cr.No.86/2022.

... Respondent

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C. to call for the records and set aside the order dated 23.08.2022 passed by the learned Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.2347 of 2022 in Crime No.86 of 2022 and to return the JCB (Backhoe Loader with Cabin) bearing Regn.No.TN-51-AL-3083, Chasis No.TEP740B2VK3014174 and Engine No.4H3202/1820803 to the custody of the petitioner.



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For Petitioner : Mr. R. Nareshkumar

For Respondent : Mr. R. Vinothraja, GA (crl.side)

ORDER

This Criminal Revision case has been filed challenging the order of dismissal dated 23.08.2022 passed by the Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.2347 of 2022 seeking interim custody of the vehicle viz., JCB (Backhoe Loader with Cabin) bearing Regn.No.TN-51-AL-3083.

2. The learned counsel for the petitioner submitted that the petitioner is the owner of the JCB bearing Regn. No.TN-51-AL-3083. The respondent police registered a case against the accused persons in Cr.No.86 of 2022 for the offence punishable under section 379 IPC and 21 (1) of Mines and Minerals (Development and Regulation) Act on 16.5.2022 on the allegation that using the above said JCB, the accused persons took sand illegally. Seeking to return of above said vehicle, he moved a petition in Crl.M.P.No.2347 of 2022 before the Principal District and Sessions Judge,



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Nagapattinam, but the court below dismissed the said petition on the ground that if the vehicle is released, there is possibility of redeployment of the said vehicle for committing the same offence. The petitioner is not arrayed as accused in this case and he only worked for contract.

3. Further, the learned counsel for the petitioner submitted 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. The petitioner is ready to give appropriate 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 and he is ready to obey any condition imposed on him by this Court.

4. The learned Government Advocate (crl.side) appearing for the respondent objected to return the vehicle to the petitioner stating that the accused has attempted to take sand in petitioner's JCB, but he fairly conceded that the petitioner is not arrayed as accused in this case.



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5. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (crl.side) for the respondent.

6. A perusal of the records would reveal that on 16.5.2022, the Village Administrative Officer of the Thanikottagam Village, namely, Arul lodged a complaint before the respondent police stating that in Thanikottagam village in Survey Nos.25-13, 25-14, 25-15, totalling ares 1.15.5 hectares, Eucalyptus, Gingeli and other agricultural trees were cultivated and without getting any permission, the accused persons using JCB took sand illegally from the said lands. Hence, a case was registered against them in Cr.No.86/2022 for the offences u/s.379 IPC and 21(1) of Mines and Minerals (Development and Regulation) Act. Pursuant to which, the JCB namely MANITOU TLB 7405 TURBO, Abinaya Earth Movers has been seized. The said JCB belongs to the petitioner herein. Admittedly, the petitioner was not arrayed as an accused and he only worked for contract.

7. Perusal of records would further reveal that the petitioner is only the



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owner of vehicle and the petitioner is ready to give guarantee and security for returning the vehicle. If the vehicle is being kept in an open space, it would cause damage to the vehicle and the value of the vehicle is diminished and continuing to keep the vehicle in open air would make the vehicle unusable. Further, if the vehicle is exposed in public place and kept unattended, it will lose its value and user capacity. Further, the Honourable Supreme Court in the case of **Sunderbhai Ambalal Desai and others Vs.State of Gujarat in Special Leave Petition (crl.) 2745 of 2022 dated 01.10.2002** has held that in order to protect the property, the Apex Court has directed to handover the seized articles to the owner on proper Panchnama.

8. Considering the above aspects and also 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 lose its value and no purpose will be served. As such, 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 previously, this Court is inclined to allow the Criminal Revision Case.



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9. In the result, this Criminal Original Petition is allowed and the impugned order passed by the Trial Court is set aside. The interim custody of JCB bearing Regn. No.TN-51-AL-3083 is ordered to be handed over to the petitioner 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 execute a bond for a sum of Rs.10,00,000/- (Rupees ten lakhs only) before the Principal District and Sessions Judge, Nagapattinam;
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.
- iv. the petitioner may take photograph of the vehicle and certified under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.
- v. the petitioner shall not alienate or encumber the vehicle in any manner;
- vi. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future,



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vii.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

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msr

Index: yes/no

Internet:yes/no

To

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



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V. SIVAGNANAM, J.

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