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Crl.R.C.No.71 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.71 of 2023

Gunasekar

... Petitioner

Vs.

The State rep. by its Inspector of Police,
Ulundurpet 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 in C.M.P.No.5120/2022 dated 22.12.202 on the file of the Judicial Magistrate No.1, Ulundurpet and set aside the same and grant interim custody of vehicle lorry bearing registration No.TN02 C 5060 to the petitioner.

For Petitioner : Mr.M.Subash

For Respondent : Mr.V.Meganathan, Govt.Advocate
(Crl. Side)



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ORDER

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This Criminal Revision Petition has been filed to set aside the order dated 22.12.202 passed C.M.P.No.5120/2022 by the Judicial Magistrate No.1, Ulundurpet and grant interim custody of vehicle lorry bearing registration No.TN02 C 5060 to the petitioner.

2. It is the case of the prosecution that on 02.11.2022 at 4.00 p.m., while the Assistant Geologist, Department of Geology and Mining, Villupuram District along with their officials were conducting routine vehicle check-up to prevent sand theft, they intercepted a lorry bearing registration No.TN-02-C-5060 at Sengurichi Toll Plaza, Ulundurpet Taluk and found that 3 units of pebbles was transported in the above said lorry, without any valid license and during search, the driver of the lorry escaped from the scene of occurrence. Therefore, a case in Crime No.555/2022 was registered under Section 379 of Indian Penal Code, and the vehicle was seized along with sand.



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3. The learned counsel for the petitioner submitted that the petitioner is the owner of lorry bearing registration No.TN-02-C-5060. He further submitted that the petitioner is no way connected with the alleged transportation of pebbles and he filed a petition in Crl.M.P.No. 5120/2022 before the Trial Court to return the vehicle to him, however, it was dismissed, by the Trial Court vide order dated 22.12.2022. He further submitted that the petitioner has no bad antecedents similar in nature and 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. He also submitted that if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle and hence, he prayed to return the vehicle to the petitioner.

4. The learned Government Advocate (Crl.Side) submitted that the the petitioner is the owner of above said lorry and it was used to transport pebbles without any valid license and hence it was seized along with two units of pebbles. He further submitted that no previous case is pending



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against the petitioner, however, opposed to return the vehicle to him.

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

6. A perusal of the records shows that, the respondent police registered a case in Crime No.555 of 2022 for the offence under Section 379 of Indian Penal Code, with regard to the transportation of pebbles without any valid license. Further, it reveals from the records that the petitioner is the owner of the lorry bearing Registration No.TN- TN-02-C-5060 and it was seized by the respondent police with three units of pebbles and now, it is under Court custody in C.P.No.339/2022. The Trial Court dismissed the petition in Crl.M.P.No.5120 of 2022, filed by the petitioner, vide order dated 22.12.2022. 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.



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7. 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.

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.***



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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. However, considering the nature of offence, this Court is inclined to allow the Revision Petition with some conditions.

8. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The Trial Court 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.2,00,000/-
(Rupees two lakhs only) before the Judicial Magistrate No.1, Ulundurpet.



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- iv.the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future,
- 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.

25.01.2023

Index: Yes/No
Internet: Yes/No
mst

To

1. The Judicial Magistrate No.1, Ulundurpet.
2. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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