



Crl.R.C.No.109 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.109 of 2023

Mariyappan

... Petitioner

Vs.

The Inspector of Police,
Sankarapuram Police Station,
Kallakurichi District.
Crime No.705/2021

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order dated 22.12.2022 made in Crl.M.P.No.2140/2022 on the file of the Judicial Magistrate, Sankarapuram and consequently, direct the respondent police to return the petitioner's vehicle bearing registration No.TN-J-4424, Engine No.066350, Chassis No.7391, Tractor Model HMkT 6522 along with Tipper by allowing the Criminal Revision Petition.

For Petitioner : Mr.V.Gunasekar

For Respondent : Mr.V.Meganathan

Government Advocate (Crl.Side)



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ORDER

This Criminal Revision Petition has been filed to set aside the order dated 22.12.2022 passed in Crl.M.P.No.2140/2022 by the Judicial Magistrate, Sankarapuram and consequently, direct the respondent police to return the Tractor bearing registration No.TN-J-4424 along with Tipper. to the petitioner/owner of vehicle.

2. It is the case of the prosecution that on 25.07.2021, when the respondent police was on patrol duty near Kaduwanur Village with regard to sand theft, they found that one unit of lake sand was transported in a Tractor bearing registration No.TN-J-4424 along with tipper. Hence the case was registered in Crime No.705/2021 under Section 379 of Indian Penal Code, and the vehicle was seized.

3. The petitioner filed a petition in Crl.M.P.No.2140/2020 to release the above vehicle to him. But it was dismissed by the Trial Court, vide order dated 22.12.2022 on the ground that with regard to return of vehicles



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involved in sand theft, the power is vested only with the Special Court.

Hence, challenging the above said order, the petitioner filed the present Revision case.

4. The learned counsel for the petitioner submitted that the petitioner is the owner of Tractor bearing registration No.TN-J-4424 along with Tipper. He further submitted that the Tractor is necessary to the petitioner for agricultural purpose 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 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, the petitioner is the owner of Tractor bearing registration No.TN-J-4424 along



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with Tipper and since the above said vehicle was used to transport the lake sand illegally, it was seized along with sand and hence, he 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.705 of 2021 for the offence under Section 379 of Indian Penal Code, 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 Tractor bearing registration No.TN-J-4424 along with Tipper and it was seized by the respondent police with one unit of lake land. Now, the vehicle is under the custody of Trial Court in C.P.No.361/2021. The Trial Court dismissed the petition in Crl.M.P.No.2140 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 Tranctor is used for agricultural purpose and 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.

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



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*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, considering the nature of offence and also taking into account the fact that the Tractor is necessary to the petitioner for agricultural purpose, 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 Trial Court is directed to return the vehicle to the owner of the vehicle on the following conditions.



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- 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.4,00,000/- (Rupees four lakhs only) before the Judicial Magistrate, Sankarapuram.
- 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.

27.01.2023

Note: Issue Order copy on 31.01.2023

Index: Yes/No
Internet: Yes/No
mst



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1. Judicial Magistrate, Sankarapuram.
2. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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