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Crl.R.C.No.126 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.126 of 2023

Raja

... Petitioner

/vs/

The Inspector of Police,
Varanjaram Police Station,
Kallakurichi District.
(Crime No.98/2022)

... Respondent

PRAYER : Criminal Revision Case has been filed under Section 397 & 401 Cr.P.C. to set aside the order dated 30.12.2022 made in Crl.M.P.No.3072 of 2022 on the file of the Judicial Magistrate-I, Kallakurichi and consequently direct the respondent police to return the petitioner vehicle bearing Registration No.TN-65 Z 7338 Tipper lorry by allowing this Criminal Revision Case.

For Petitioner ... Mr.V.Gunasekar

For Respondent ... Mr.V.Meganathan
Government Advocate (Crl.side)

ORDER

This Criminal Revision Case is filed against the order of the learned Judicial Magistrate-I, Kallakurichi in Crl.M.P.No.3072 of 2022, dated 30.12.2022.



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2. The case of the prosecution is that, the petitioner is an accused in the case registered by the police in Crime No. 98 of 2022 for the offence punishable under Section 379 I.P.C., on the allegation that on 20.08.2022 at about 5.30 a.m., while supervising the Malaikottalam lake, the respondent police found the accused taking 2 units of gravel sand in his Tipper lorry bearing Registration No. TN-65 Z 7338. Hence the respondent police seized the vehicle.

3. The learned counsel for the petitioner submitted that the petitioner is the owner of the Tipper Lorry bearing registration No. TN-65 Z 7338. He further submitted that he has not committed any offence as alleged by the respondent police and his vehicle was not involved in any other case, similar in nature. The Trial Court, without considering the fact dismissed the petition on 30.12.2022 in Crl.M.P.No.3072 of 2022 filed by the petitioner to return the vehicle.

4. The learned counsel further 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. He further submitted that the petitioner is ready to abide by any condition imposed by this court 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) for the respondent submitted that the petitioner is the owner of the Tipper Lorry bearing registration No. TN-65 Z 7338 and it was seized for taking 2 units of gravel sand. He further submitted that the Tipper Lorry was used to take gravel sand illegally and if the vehicle is returned to the petitioner, there are every chance to use it for committing similar type of offence. Hence, he objected to return the vehicle to the custody of the petitioner.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and I have perused the materials on record.



WEB COURT

7. On a perusal of the records, it reveals that the vehicle was not involved in any other case, similar in nature and he is the owner of the Tipper lorry bearing Registration No. TN-65 Z 7338 and it was seized by the respondent police while taking two units of gravel sand. The Trial Court dismissed the petition in Crl.M.P.No.3072 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.

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



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Crl.R.C.No.126 of 2023

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.***

9. 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 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, this Court is inclined to allow the Criminal Revision Case.



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10. Accordingly, this Criminal Revision Case 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 produce the original RC Book of the vehicle and other relevant records to prove his ownership and the respondent police, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle;

(ii)The petitioner shall not alter or alienate the vehicle in any manner;

(iii) The petitioner ***shall execute a bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the satisfaction of the learned Judicial Magistrate-I, Kallakurichi.***

(iv)The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the



CrI.R.C.No.126 of 2023

respondent or the Court below as well as by the District Collector of the District or authorized officer in that behalf by the Government;

(v)The petitioner shall participate in the confiscation proceedings, if any initiated, and shall produce the vehicle, before the confiscation authority. This order is subjected to the confiscation proceedings.

Index : Yes/No
Internet : Yes/No
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08.02.2023

Note: Issue order copy on or before 14.02.2023

To

1.The Judicial Magistrate No.I, Kallakurichi.

2.The Inspector of Police,
Varanjaram Police Station,
Kallakurichi District..

3.The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM ,J.

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