



Crl.R.C.No.182 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.182 of 2023

Nandhakumar

... Petitioner

Vs.

State rep. by the Inspector of Police,
Thittacherry Police Station,
Nagapattinam District.
(Crime No.284/2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records in Crl.M.P.No.4391/2022 on the file of the Principal Sessions Judge, Nagapattinam and set aside the same and grant interim custody of the vehicle namely Eicher Tractor bearing registration No.TN 49 AH 1807 with Tipper to the petitioner in connection with the crime No.284/2022 on the file of the respondent police.

For Petitioner : Mr.K.Pragadeesh Kumar

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.4391/2022 by the learned Principal District and Sessions Judge, Nagapattinam and to grant interim custody of Eicher Tractor bearing registration No.TN 49 AH 1807 with Tipper to the petitioner/owner of vehicle.

2. The case of the prosecution is that, the petitioner and 7 others had involved in illegal transportation of $\frac{1}{2}$ unit of river sand in a Tractor bearing registration No.TN 49-AH-1807 attached with Tipper. Hence, the respondent police registered a case in Crime No.284/2022 against them for the offences punishable under Sections 379, 430 of IPC and Section 21(1) of Mines and Minerals (Development & Regulation) Act and seized the vehicle.

3. The petitioner being the owner of the above vehicle, filed a petition in Crl.M.P.No.4391/2022 to grant interim custody of the vehicle to him.



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But it was dismissed by the Trial Court, vide order dated 22.12.2022.

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

4. The learned counsel for the petitioner submitted that the petitioner is the owner of the Tractor bearing registration No.TN 49 AH 1807 along with Tipper. He further submitted that the Tractor was used to 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 under police custody 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 owner of the Tractor bearing registration No.TN 49 AH 1807 along with Tipper and since the above said vehicle was used to transport the



river 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 show that, the respondent police registered a case in Crime No.284/2022 against the accused persons including the petitioner for the offences punishable under Sections 379, 430 of Indian Penal Code and Sec.21(1) of Mines and Minerals Act, with regard to sand theft using the Tractor along with Tipper, as stated supra. Further, it reveals from the records that the petitioner is the owner of the above vehicle and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.4391 of 2022, filed by the petitioner to return the vehicle to him. It is the contention of the learned counsel for the petitioner that the Tractor 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 Leave 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. As such, considering the nature of offence and also taking into account the fact that the Tractor was used 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 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 Principal District and Sessions
Judge, Nagapattinam.
- 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.

10.02.2023

Index: Yes/No
Internet: Yes/No
mst

To

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



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V.SIVAGNANAM, J.,

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