



Crl.R.C.No.195 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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V.Gunasekaran

... Petitioner

Vs.

State rep. by the Inspector of Police,
Kangayam Police Station,
Kangayam, Tiruppur District,
Crime No.11 of 2023
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records relating to Crl.M.P. No.361 of 2023 dated 20.01.2023 on the file of the Judicial Magistrate Court, Kangayam, Tiruppur District and set aside the same and consequently, directing the Judicial Magistrate Court, Kangayam, Tiruppur District to return back the petitioner's Tipper Lorry bearing registration No.TN-78-L-0099 to the petitioner.

For Petitioner : Mr.C.Prakasam

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 20.01.2023 passed in Crl.M.P. No.361 of 2023 by the learned Judicial Magistrate, Kangayam, Tiruppur District and to return the Tipper Lorry bearing registration No.TN-78-L-0099 to the petitioner/owner of vehicle.

2. The case of the prosecution is that, the vehicle, viz., Tipper Lorry bearing registration No.TN-78-L-0099, which is sought to be returned to the petitioner herein, and other two vehicles, namely TN-38-BA-9522 Ashok Leyland Tipper lorry and TN-41-AC-7071 Ashok Leyland Tipper Lorry were used to transport totally 12 units of graval sand illegally by its respective drivers. Hence, a case in Crime No.11 of 2023 was registered under Section 379 IPC against the owner of the vehicles and seized the above vehicles along with graval sand.



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3. The petitioner being the owner of the Tipper Lorry bearing registration No.78-L-0099, filed a petition in Crl.M.P.No.361 of 2023 to release the vehicle to him before the Trial Court, but it was dismissed, vide order dated 20.01.2023. 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 the Tipper Lorry bearing registration No.TN-78-L-0099. He further submitted that the vehicle is the only source of income to the petitioner and his family 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 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.



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5. The learned Government Advocate (Crl.Side) submitted that, the petitioner is owner of the Tipper Lorry bearing registration No.TN-78-L-0099 and since the above said vehicle was used to transport the graval 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.11/2023 against the owner of the vehicles for the offence punishable under Section 379 IPC with regard to sand theft using Bharat Benz Tipper lorry TN-78-L-0099; Ashok Leyland Tipper Lorry bearing registration No.TN-38-BA-9522; and Ashok Leyland Tipper lorry bearing registration No.TN-41-AC-7071. Further, it reveals from the records that the petitioner herein is the owner of the Tipper lorry bearing Registration No. TN-78-L-0099 and it was seized by the respondent police



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along with the above said vehicles. The Trial Court dismissed the petition in Crl.M.P.No.361/2023, filed by the petitioner to return the vehicle to him. It is the contention of the learned counsel for the petitioner that the Lorry is the only source of income to the petitioner 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.



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*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.***

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 submission made by the learned counsel for the petitioner, 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



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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.25,00,000/- (Rupees twenty five lakhs only) before the Judicial Magistrate, Kangayam, Tiruppur District.
- 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.

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Index: Yes/No
Internet: Yes/No
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To

1. The Judicial Magistrate, Kangayam, Tiruppur District.
2. The Inspector of Police, Kangayam Police Station, Tiruppur District.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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