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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.04.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.202 of 2023

P.Shanmugam

... Petitioner

Vs.

1. State Rep by

The Inspector of Police,
Attur Rural Police Station,
Salem District.
(Crime No. 201 of 2022)

2. The Manager,

Sakthi Finance Ltd,
D.No.88/B-18, Durugam Road,
Kallakurichi 606 202.

3. Rajarajeswari

... Respondents

(R3 impleaded as per order dated 21.02.2023 in
Crl.M.P.No.2475 of 2023 in Crl.RC.No.202 of 2023)

Criminal Revision filed under Section 397 and 401 of Cr.P.C., to call for the records relating the order dated 21.12.2022 made in Crl.M.P.No.3255 of 2022 in Crime No.201 of 2022 on the file of the learned Principal Sessions Judge, Salem and set aside the same and direct the respondent herein to return the vehicle / JCB 3 DX Excavator Loader Vehicle bearing Registration No.TN-55-X-7659.



For Petitioner : Mr.S.Velmurugan

For Respondent-1 : Mr.R.Vinothraja, GA, (crl.side)

For Respondent-2 : Mr.R.Prabhudoss

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Principal Sessions Judge, Salem in Crl.M.P.No.3255 of 2022 dated 21.12.2022 and to return the vehicle / JCB 3 DX Excavator Loader Vehicle bearing Registration No.TN-55-X-7659 to the petitioner /owner of vehicle.

2.The learned counsel for the petitioner submitted that the 1st respondent-Police registered a case against the accused on 07.06.2022 in Crime No.201 of 2022 for the offence under Section 452 of IPC and 3(1)(g) of the Schedule Case and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015 based on a complaint given by one Raja Rajeswari/the 3rd respondent herein. It is alleged in the complaint that the accused engaged this petitioner, who is the owner of the JCB Vehicle bearing Registration No.TN-55-X-7659, to demolish the defacto



complainant's house. However, the petitioner did not have any knowledge about the dispute between the defacto complainant and the accused as well as the alleged illegal act. Without knowing about the same, the petitioner also completed the work that he has been assigned to him. Under these circumstances, the respondent-Police also seized his JCB. Hence, he prayed to return the vehicle to the petitioner.

3.The learned Government Advocate (Crl.Side) submitted that there is already a dispute between the accused and the father of the defacto complainant. The accused has engaged this petitioner and his JCB for the purpose of demolishing the defacto complainant's house illegally. The respondent-Police registered the case against the accused on the complaint given by one Rajarajeswari and seized the petitioner's JCB bearing Registration No.TN-55-X-7659. The said vehicle is now in the custody of the trial Court.

4.Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Crl.Side) appearing for the 1st respondent and the



learned counsel for the 2nd respondent and I have perused the materials on record.

5.A perusal of the records shows that one Raja Rajeswari, D/o.Ramasamy gave a complaint to the respondent-Police on 07.06.2022 alleging that there is dispute between her father and the accused, Kalimuthu and the accused engaged the petitioner's JCB to demolish the defacto complainant's house and also damaged the property, which is worth about 5 lakhs. Hence, the respondent police registered a case against the accused in Crime No.201 of 2022 for the offence under Section 452 of IPC and 3(1)(g) of the Schedule Case and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015. Since the petitioner's JCB was used for demolishing the defacto complainant' house illegally, the respondent-Police also seized the JCB. According to the petitioner, he is the owner of the JCB. He was engaged by the accused to do some work and he has no knowledge about the dispute between the defacto-complainant and the accused. He completed the work what he has been instructed by the accused. The Trial Court dismissed the petition in Crl.M.P.No.3255 of 2022 filed by the petitioner on the ground that the



defacto complainant's house was totally demolished by the petitioner with the help of JCB and hence, he is not entitled for return of the vehicle. It is the contention of the learned counsel for the petitioner that the said vehicle is not involved in crime with the absolute knowledge of the petitioner and therefore, he seeks to grant interim custody of the vehicle to the petitioner. The petitioner is also 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.

6. 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 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 petitioner was engaged by the accused to do the work and he did not have any knowledge about the previous enmity between the



accused and the defacto complainant, this Court is inclined to allow the Criminal Revision Case.

7. In the result, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The interim custody of the vehicle is ordered to be handed over to the petitioner on the following conditions.

- i. the petitioner shall prove his ownership of the JCB Vehicle bearing Registration No.TN-55-X-7659 by producing the R.C.Book and other relevant records;
- ii. the petitioner shall execute a bond for a sum of Rs.10,00,000/- (Rupees ten lakhs only) before the learned Principal Sessions Judge, Salem
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.
- iv. the petitioner may take photograph of the vehicle and certified under Section 65B of the Central At 1 of 1972 and such photographs may be used as secondary evidence.



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v. the petitioner shall not alienate or encumber the vehicle in any manner;

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

vii. the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

03.04.2023

Index: Yes/No

Internet: Yes/No

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To

1. The learned Principal Sessions Judge, Salem

2. The Inspector of Police,
Attur Rural Police Station,
Salem District.

3. The Public Prosecutor, High Court, Madras.



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V. SIVAGNANAM, J.

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