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Crl.R.C.No.218 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.218 of 2023

Prakash
Petitioner

...

Vs.

The State rep by the Inspector of Police,
Thirunavalur Police Station,
Kallakurichi District.
Crime No.536/2022
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order passed by the learned Judicial Magistrate No.II, Ulundurpet in Crl.M.P.No.9/2023 dated 04.01.2023 and subsequently, grant custody of the vehicle Ashok Leyland lorry bearing registration No. TN 28 AZ 0452 to the petitioner

For Petitioner : Mr.S.Saravanakumar

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 passed by the learned Judicial Magistrate No.II, Ulundurpet in Crl.M.P.No.9/2023 dated 04.01.2023 and to return the vehicle Ashok Leyland lorry bearing registration No. TN 28 AZ 0452 to the petitioner /owner of vehicle.

2. It is the case of the prosecution that on 18.11.2022, when the respondent police along with their officials were on patrol duty at Mattigai junction, Ulundurpet Raod, they found that two units of pebbles was transported illegally in a Ashok Leyland Lorry bearing Registration No.TN-28-AZ-0452. Hence a case in Crime No.536/2022 was registered under Section 379 of Indian Penal Code, and the vehicles were seized.

3. The petitioner is the owner of the above said lorry and he filed a petition in Crl.M.P.No.9/2023 before the Trial Court to release the vehicle to



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him. But it was dismissed , vide order dated 04.01.2023 on the ground that with regard to return of vehicles involved in mines and minerals 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 Ashok Leyland lorry bearing registration No. TN 28 AZ 0452. He further submitted that the lorry was purchased under hypothecation and he has to pay the EMI 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



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petitioner is owner of the Ashok Leyland lorry bearing registration No. TN 28 AZ 0452 and since the above said vehicle was used to transport the pebbles illegally, it was seized and hence, he objected to return the vehicle to him.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for 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.536/2022 for the offence under Section 379 of Indian Penal Code, with regard to transportation of pebbles illegally. Further, it reveals from the records that the petitioner is not an accused in this case and he is the owner of the Ashok Leyland lorry bearing registration No. TN 28 AZ 0452 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.9/2023, filed by the petitioner, on the ground that the petition, relating to return of vehicle involved in



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Mines and Minerals theft, is not maintainable before the Magistrate. It is the contention of the learned counsel for the petitioner that the vehicle was purchased under hypothecation and he has to pay the EMI 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,



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*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, this Court is inclined to allow the Revision Petition.

9. 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.



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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.10,00,000/- (Rupees ten lakhs only) before the Judicial Magistrate No.II, Ulundurpet.
- 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
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To

1. Judicial Magistrate No.II, Ulundurpet.
2. The Inspector of Police, Thirunavalur Police Station,
Kallakurichi.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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