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Crl.R.C.No.331 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.331 of 2023

R.Sugantha

... Petitioner

Vs.

The State rep. by the Inspector of Police,
Edappadi Police Station,
Salem District,
Crime No.578 of 2020

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 407 of Criminal Procedure Code, 1973 to set aside the order dated 09.09.2022 made in CMP No.2108 of 2020 on the file of the District Munsif cum Judicial Magistrate, Edappadi by allowing the Criminal Revision Petition.

For Petitioner : Mr.R.Mahubala

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 09.09.2022 made in CMP No.2108 of 2020 on the file of the District Munsif cum Judicial Magistrate, Edappadi and to return the Lorry TATA Motars LPX 407 bearing registration No.TN.74-R-0280 to the petitioner/owner of vehicle.

2. The case of the prosecution is that, the respondent police registered a case in Crime No.578/2020 for the offences punishable Sections 379 IPC against Ramesh, with regard to the transportation of one unit of lake sand, without any valid license, using the above said lorry and the vehicle was seized.

3. The petitioner, who is the owner of the above said Lorry, filed a petition in Crl.M.P.No.2108/2022 to return the vehicle to her and it was dismissed by the Trial Court, vide order dated 09.09.2022. Aggrieved over the same, this Criminal Revision Case has been filed.



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4. The learned counsel for the petitioner submitted that, the petitioner is not an accused in the above case and she had no knowledge about the alleged transportation of lake sand by the driver. He further submitted that, the vehicle has been kept idle from the date of seizure without any useful purpose and the vehicle is the only source of income to the petitioner and she is ready to give appropriate guarantee as well as security for return of vehicle and also she 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 the owner of the above vehicle and the vehicle is not involved in any other case. He further submitted that the above said vehicle was used to transport one unit of lake sand, without any permit or license and hence, it was seized. Therefore, he objected to return the vehicle to the petitioner.



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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 shows that, the respondent police registered a case in Crime No.578/2020 for the offence punishable Section 379 IPC, with regard to transportation of one unit of lake sand without any valid license. Further, it reveals from the records that the petitioner is not an accused in this case and she is the owner of the lorry bearing registration No. TN-74-R-0280 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.2108/2022, filed by the petitioner, on the ground that the offence with regard to sand theft is triable by Special Court. It is the contention of the learned counsel for the petitioner that if the vehicle is being kept idle in open space, it would cause damage to the vehicle and the petitioner is ready to abide by any condition imposed by this Court and also ready to give guarantee and security for returning the vehicle.



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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, 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



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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 respondent police is directed to return the vehicle to the owner of the vehicle on the following conditions.

- i. the petitioner shall prove her 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 District Munsif cum Judicial Magistrate (FAC), Edppadi.



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- iv.the petitioner shall give an undertaking that she 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 or before the respondent police.

23.02.2023

Index: Yes/No
Internet: Yes/No
mst

To

1. District Munsif cum Judicial Magistrate (FAC),
Edappadi.
2. The Inspector of Police, Edappadi Police Station,
Salem District.
- 3.The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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