



Crl.R.C.No.305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

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THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.R.C.No.305 of 2023

Parimala

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
Vallimedupettai Police Station,
Villupuram District.
(Crime No.190/2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records of the learned Judicial Magistrate No.I, Tindivanam and set aside the order dated 10.01.2023 in Crl.M.P.No.14 of 2023 and order return of the vehicle, JCB bearing Registration No.TN 12 S 0294, Engine No.H00134230, Chasis No.HAR3DXSSE02524930 concerned in Crime No.190 of 2022, on the file of the respondent to the custody of the petitioner herein.

For Petitioner : Mr.M.R.Elavarasan

For Respondent : Mr.V.Meganathan,
Government Advocate (Crl.Side)



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ORDER

This Criminal Revision Case has been filed to set aside the order dated 10.01.2023 passed in Crl.M.P.No.14 of 2023 by the learned Judicial Magistrate No.I, Tindivanam and grant interim custody of vehicle JCB bearing Registration No.TN 12 S 0294.

2. The case of the prosecution is that on 23.11.2022 at about 12.15 a.m., the respondent police, on receipt of information had went to kalpakkam village, found that the driver of the vehicle using his JCB had taken the red soil without valid permission and loaded in a Tipper lorry. Hence, the respondent police registered a case in Crime No.190 of 2022 against the accused persons for the offence under Sections 379 IPC r/w Section 21(1) of Mines & Minerals (Development & Regulation) Act 1957 and seized the JCB bearing Registration No.TN 12 S 0294 along with Tipper Lorry. During the pendency of the investigation, the petitioner filed an application before the learned Judicial Magistrate No.I, Tindivanam, in Crl.M.P.No.14 of 2023 under Sections 451 & 457 of Cr.P.C. for return of



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vehicle and the learned Magistrate by order dated 10.01.2023 dismissed the same. Challenging the said order, the petitioner has filed the present revision before this Court.

3. The learned counsel for the petitioner submitted that the petitioner is the owner of the JCB bearing Registration No.TN 12 S 0294. He further submitted that she has not committed any offence as alleged by the respondent police and her vehicle was not involved in any other case, similar in nature.

4. The learned counsel further submitted that, no purpose will be served in keeping the vehicle under the custody of respondent police 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 abide by any condition imposed by this court 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



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the petitioner.

5. The learned Government Advocate (Crl.Side) submitted that, the petitioner is the owner of the JCB bearing Registration No.TN 12 S 0294 and it was seized along with Tipper Lorry. He further submitted that the JCB was used to extract the red soil for illegal transportation and if the vehicle is returned to the petitioner, there are every chances to use it for committing similar type of offence. Hence, he objected to return the vehicle to the custody of the petitioner.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and I have perused the materials on record.

7. On a perusal of the records, it reveals that the petitioner is not an accused in this case and she is the owner of the JCB bearing Registration No.TN 12 S 0294 and it was seized by the respondent police. The Trial



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Court dismissed the petition in Crl.M.P.No.14 of 2023, filed by the petitioner, on the ground that the petition, relating to return of vehicle involved in Mines and Minerals theft, is not maintainable before the Magistrate. It is the contention of the learned counsel for the petitioner that 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



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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 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 vehicle is not involved in any other case similar in nature, this Court is inclined to allow the Criminal Revision Case.

9. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The respondent



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

- (i)The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove his ownership and the respondent police, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle;
- (ii)The petitioner shall not alter or alienate the vehicle in any manner till confiscation proceedings is over;
- (iii) The petitioner ***shall execute a bond for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the satisfaction of the learned Judicial Magistrate No.1, Tindivanam.***
- (iv)The petitioner shall also give an undertaking that she will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent or the Court below as well as by the District



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Collector of the District or authorized officer in that behalf by the Government;

(v)The petitioner shall participate in the confiscation proceedings, if any initiated, and shall produce the vehicle, before the confiscation authority. This order is subjected to the confiscation proceedings.

28.02.2023

Index: Yes/No
Internet: Yes/No
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To

1. The Judicial Magistrate No.I, Tindivanam
2. The Inspector of Police,
Vallimedupettai Police Station,
Villupuram District.
3. The Public Prosecutor, Madras High Court, Chennai.



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V.SIVAGNANAM, J.,

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