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Crl.R.C.No.338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.338 of 2023

Muniyan

... Petitioner

Vs.

The Inspector of Police,
Sankarapuram Police Station,
Kallakurichi District.
(Cr.No.431 of 2022)

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. to set aside the order dated 07.02.2023 made in Crl.M.P.No.499 of 2023 on the file of the Judicial Magistrate, Sankarapuram and consequently direct the respondent police to return the petitioner the vehicle Model Mahindra 575 DI XP PLUS Tractor bearing Registration No.TN-15-Mc-2603, Engine No.NMF2GCE0059, Chassis No.MBNGAAL1AMNF03115 along with tripper by allowing this Criminal Revision Petition.



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For Petitioner : Mr.V.Gunasekar
For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

Challenging the order, dismissing the petitioner's application filed under Section 451 of Cr.P.C, passed by the Judicial Magistrate, Sankarapuram in Crl.M.P.No.499 of 2023, dated 07.02.2023 to return the vehicle, the present Revision has been filed.

2. The respondent police seized the vehicle Mahindra 575 DI XP PLUS Tractor bearing Registration No.TN-15-MC-2603, Engine No.NMF2GCE0059, Chassis No.MBNGAAL1AMNF03115 along with tipper belonging to the petitioner on the allegation that the vehicle is indulged by the petitioner / accused for illegal transportation of 1/2 unit river sand. Pursuant to which, the respondent police registered a case in



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Crime No.431 of 2022 for the offence under Section 379 IPC. The petitioner, who is the owner of the above said vehicle, filed an application in Crl.M.P.No.499 of 2023 before the Trial Court for return of vehicle. The Trial Court dismissed the petition on the ground that if the vehicle is released, there is every possibility of redeployment of the vehicle for committing the same offence.

3. The learned counsel for the petitioner submitted that the petitioner is the owner of the above said vehicle. The respondent police registered a case the petitioner / accused person in Crime No.431 of 2022 for the offence under Section 379 IPC and seized the vehicle Mahindra 575 DI XP PLUS Tractor bearing Registration No.TN-15-MC-2603 along with tipper on 03.10.2022, on the allegation that it is transported 1/2 unit of river sand illegally. Further he submitted that this vehicle is not involved in previous offences and it is only for his livelihood using the same for agricultural work. Hence, seeking to interim custody of the vehicle. The trial Court without considering the facts, dismissed the petition filed by the petitioner



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before the trial Court for return of vehicle. Aggrieved against the impugned order, the petitioner preferred this present criminal revision case.

4. The learned Government Advocate (Crl. Side) submitted that the respondent police registered a case against the petitioner on 03.10.2022 in Cr.No.431 of 2022 for transporting 1/2 unit of river sand illegally in Mahindra 575 DI XP PLUS Tractor bearing Registration No.TN-15-MC-2603 along with tipper.

5. Heard both sides and perused the materials available on record.

6. On perusal of records, it is revealed that the respondent police registered a case against the petitioner in Crime No.431 of 2022 on 03.10.2022 for the offence punishable under Section 379 IPC for illegal transportation of 1/2 unit river sand. The petitioner claims that he is the owner of the tractor bearing Registration No.TN-15-MC-2603 Mahindra tractor and tipper. The property has been produced before the trial Court



and the same way received by the trial Court in Case Property No.1 of 2023.

7. Considering the facts that the petitioner is the owner of the vehicle 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 and the value of the vehicle is diminished and continuing to keep the vehicle in open air would make the vehicle unusable.

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

9. Accordingly, the Criminal Revision Case is allowed and the impugned order dated 07.02.2023 passed in Crl.M.P.No.499 of 2023 by the



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learned Judicial Magistrate, Sankarapuram is set aside and the learned Judicial Magistrate, Sankarapuram is directed to return the vehicle Mahindra 575 DI XP PLUS Tractor bearing Registration No.TN-15-MC-2603 to interim custody of the petitioner, on complying 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.5,00,000/- (Rupees Five lakhs only) before the Judicial Magistrate, Sankarapuram.
- 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.

08.03.2023

rna

Index:yes/no

Internet:yes/no

Note: Issue Order copy on 10.03.2023



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To

1. The Judicial Magistrate, Sankarapuram.
2. The Inspector of Police,
Sankarapuram Police Station,
Kallakurichi District.
3. The Public Prosecutor,
High Court of Madras, Chennai.



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V.SIVAGNANAM, J.,

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