



Crl.R.C.No.395 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM

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

Crl.R.C.No.395 of 2023

T.Selvan

... Petitioner

Vs.

The State rep. by
The Sub Inspector of Police,
Chinnasalem Police Station,
Kallakurichi District.
(Crime No.11/2023)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records in Crl.M.P.No.125 of 2023 on the learned Judicial Magistrate No.II, Kallakurichi and set aside the same subsequently grant interim custody of vehicle Tipper Lorry bearing registration No.TN 45 AT 2399 with unnumbered Tipper to the petitioner.

For Petitioner : Mr.T.Balachandran

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

ORDER



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This Criminal Revision Case has been filed to set aside the order dated 09.02.2023 passed in Crl.M.P.No.125 of 2023 by the learned Judicial Magistrate No.II, Kallakurichi and grant interim custody of vehicle Tipper Lorry bearing registration No.TN 45 AT 2399.

2. The case of the prosecution is that on 11.01.2023 at about 21.10 p.m., the respondent police, during the routine vehicle checkup came to know that the petitioner herein alleged to have illegally carried 2 ½ units of Karungal Sakka in the Tipper Lorry bearing registration No.TN 45 AT 2399 without any license and permission of the Government authorities. Hence, the respondent police registered a case in Crime No.11 of 2023 against the accused persons for the offence under Sections 379 IPC and seized the Tipper Lorry bearing Registration No. TN 45 AT 2399. During the pendency of the investigation, the petitioner filed an application before the learned Judicial Magistrate No.II, Kallakurichi, in Crl.M.P.No.125 of 2023 under Sections 451 of Cr.P.C. for return of vehicle and the learned Magistrate by order dated 09.02.2023 dismissed the same. Challenging the



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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 Tipper Lorry bearing Registration No.TN 45 AT 2399. He further submitted that there is no previous case against this petitioner as well as the 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 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 the owner of the Tipper Lorry bearing Registration No.TN 45 AT 2399 and it was seized along with 2 ½ units Karungal Sakkai. He further submitted that the Tipper Lorry was used to transport Karungal Sakkai illegally 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 the owner of the Tipper Lorry bearing Registration No.TN 45 AT 2399 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.125 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



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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 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



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*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 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



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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.8,00,000/- (Rupees Eight Lakhs only) to the satisfaction of the learned Judicial Magistrate No.II, Kallakurichi.***

(iv)The petitioner shall also give an undertaking that he 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 Collector of the District or authorized officer in that behalf by the Government;

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Index: Yes/No
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V.SIVAGNANAM, J.,

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To

1. The Judicial Magistrate No.II, Kallakurichi.
2. The Sub Inspector of Police,
Chinnasalem Police Station,
Kallakurichi District.
3. The Public Prosecutor, Madras High Court, Chennai.

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