



Crl.R.C.No.558 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.558 OF 2023

Vignesh

.. Petitioner

Vs

The State, represented by
the Inspector of Police,
Elavanasurkottai Police Station,
Kallakurichi District
Cr.No.337/2021.

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w.401 Cr.P.C. to set aside the order passed by the Judicial Magistrate No.I, Ulundurpet in CMP.No.2053 of 2021, dated 13.10.2021 and subsequently grant custody of the vehicle bearing Chassis No.NCE4433 and Engine No.NCE4433 Tractor and Tipper (item 2) to the petitioner.

For Petitioner : Mr. Raji

For Respondent : Mr. R. Vinothraja, GA (crl.side)



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ORDER

This Criminal Revision case has been filed challenging the order of dismissal dated 13.10.2021 passed by the Judicial Magistrate No.I, Ulundurpet in C.M.P.No.2053 of 2021 seeking interim custody of the vehicle viz., Tractor and Tipper bearing Chassis.No.NCE4433 and Engine No.NCE443.

2.The fact of the case is that the petitioner is the owner of the Tractor and Tipper bearing Chassis.No.NCE4433 and Engine No.NCE4433. The respondent police registered a case in Cr.No.337/2021 on 20.09.2021 for the offence under section 379 IPC against the petitioner/A3 along with the other accused for illegal transportation of ½ unit of lake sand without any valid permit. Pursuant to which, they have seized the above said vehicle alleging that the vehicle has been engaged in illegal transportation of sand. Now the vehicle was kept under the custody of the court below in C.P.No.158 of 2021 (item No.2). Since the petitioner is the owner of the vehicle, he filed a petition in CMP.No.2053 of 2021 before the Judicial Magistrate No.1, Ulundurpet for return of property in C.P.No.158 of 2021. The trial court dismissed the



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petition on the ground that the petitioner has committed sand theft without proper and valid license.

3.The learned counsel for the petitioner submitted that the vehicle is not involved in any previous case of offence of similar in nature. The vehicle has been kept under the custody of the court from 07.10.2021 in C.P.No.158 of 2021 (item No.2) and if the vehicle is kept in open space under unconditional weather conditions, the same would depreciate its value and user capacity.

4. Further, the learned counsel for the petitioner contended 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. 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 and he is ready to obey any condition imposed on him by this Court.



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5. The learned Govt. Advocate (Crlside) objected to return of vehicle, stating that the vehicle was used for illegal transportation of lake sand and if the vehicle is ordered to be returned, he may use the vehicle for committing same offence. He fairly conceded that the vehicle is not involved in any previous case of similar in nature.

6. Heard both sides and perused the entire materials available on record.

7.A perusal of the records would reveal that the respondent police, while conducting police patrolling in Vadakurumboor Village, on receiving secret information regarding sand theft, went to Vadakurumboor Village, Elavankottai, where, they found the accused persons were taking lake sand illegally with the help of JCB and on seeing the police, all of them escaped from the spot. Pursuant to which, they have seized vehicles involved in sand theft and registered a case against the owners of the vehicle in Cr.No.337 of 2021 for the offence u/s.379 of IPC. The petitioner is the owner of the tractor and Tipper bearing Chassis.No.NCE4433 and Engine No.NCE4433. After seizure, it was produced before the court below in C.P.No.158 of 2021 (item



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No.2) and it has been kept under custody from 07.10.2021 onwards.

8. Perusal of records would further reveal that the petitioner is the owner of vehicle and he is ready to give guarantee and security for returning the vehicle. If the vehicle is being kept in an 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. Further, the Honourable Supreme Court in the case of **Sunderbhai Ambalal Desai and others Vs.State of Gujarat in Special Leave Petition (crl.) 2745 of 2022** dated 01.10.2002 has held that in order to protect the property, the Apex Court has directed to handover the seized articles to the owner on proper Panchnama.

9. Considering the above aspects and also 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.



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10. In the result, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The interim custody of the vehicle bearing Chassis No.NCE4433 and Engine No.NCE4433 Tractor and Tipper (item 2) is ordered to be handed over to the petitioner, who is the owner of the vehicle on 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 execute a bond for a sum of Rs.5,00,000/-(Rupees five lakhs only) before the Judicial Magistrate No.I, Ulundurpet.
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.
- iv. the petitioner may take photograph of the vehicle and certified under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.
- v. the petitioner shall not alienate or encumber the vehicle in any manner;
- vi. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future;
- vii. the petitioner shall also produce the vehicle as and when required before the court below and before the respondent



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police.

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msr

Index: yes/no

Internet:yes/no

To

1. The Judicial Magistrate No.I, Ulundurpet.
- 2.The Inspector of Police,
Elavanasurkottai Police Station,
Kallakurichi District.
3. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.

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