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Crl.R.C.No.540 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.540 of 2023

Vignesh

... Petitioner

Vs.

The State rep by the Inspector of Police,
Keevalur Police Station,
Nagapattinam District
(Crime No.75 of 2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Criminal Procedure Code, 1973 to set aside the order passed in Crl.M.P.No.2377 of 2022 dated 11.08.2022 on the file of the learned Principal District and Sessions Judge, Nagapattinam and further direct the respondents to return the petitioner's vehicle seized in Crime No.75 of 2022 on the file of the respondent Police.



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For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.2377 of 2022 dated 11.08.2022 and to return the Tractor attached with Tipper bearing registration Nos. TN-51-AQ-5726 and TN-51-F-7214 to the petitioner /owner of vehicle.

2.It is the case of the prosecution that on 18.02.2022, when the respondent police along with their officials were on patrol duty near Melaothythoor, they found that one unit of mixed soil was transported illegally in a Tractor attached with Tipper bearing registration Nos. TN-51-AQ-5726 and TN-51-F-7214. Hence a case in Crime No.75/2022 was registered under Section 379 of Indian Penal Code



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read with 21(1) of Mines and Minerals (Development and Regulation)

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Act and the vehicle was seized.

3.The petitioner is the owner of the above said tractor and he filed a petition in Crl.M.P.No.2377 of 2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 11.08.2022 on the ground that with regard to return of vehicles involved in mines and minerals theft, the power is vested only with the Special Court. Hence, challenging the above said order, the petitioner filed the present Revision case.

4.The learned counsel for the petitioner submitted that the petitioner, who is A1, is the owner of the Tractor attached with Tipper bearing registration Nos.TN-51-AQ-5726 and TN-51-F-7214. The respondent-Police registered a case against the petitioner in Crime



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No.75 of 2022 for the offences under Sections 379 IPC read with 21(1) of Mines and Minerals (Development and Regulation) Act for illegally transporting one unit of mixed soil without any valid permit and also seized the vehicle. He further submitted that 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 vehicle is not involved in any case similar in nature and 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 to the petitioner.

5.The learned Government Advocate (Crl.Side) submitted that the petitioner is owner of the Tractor attached with Tipper bearing registration Nos. TN-51-AQ-5726 and TN-51-F-7214 and since the



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above said vehicle was used to transport one unit of mixed soil illegally without any valid permit, it was seized and now, investigation is pending. Hence, he objected to return the vehicle to him.

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

7.On perusal of the records, the facts reveals that the respondent police registered a case against this petitioner along with one another accused Navanithakrishnan for having committed offence punishable under Sections 379 IPC read with 21(1) of Mines and Minerals (Development and Regulation) Act in Crime No.75 of 2022. Further, it reveals from the records that the petitioner is the owner of the Tractor attached with Tipper bearing registration Nos. TN-51-AQ-



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5726 and TN-51-F-7214 and it was seized by the respondent police for illegally transporting one unit of mixed soil without any valid permit, while they were in patrol duty on 18.02.2022 at 13.30 hrs. The Trial Court dismissed the petition in Crl.M.P.No.2377 of 2022, 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.

8.Considering the nature of the case 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, this Court is inclined to grant interim custody of the vehicle to the petitioner.



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9.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



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*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 and also the fact that the vehicle in question is used for agricultural purpose, this Court is inclined to allow the Criminal Revision Case.

10. 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.



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- 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 Principal District and Sessions Judge, Nagapattinam.
- 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.

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Index: Yes/No

Internet: Yes/No



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To

- 1.The Principal District and Sessions Judge, Nagapattinam
2. The Inspector of Police,
Keevalur Police Station,
Nagapattinam District
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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