



CRL.R.C.No.599 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.599 of 2023

Manimegalai

.. Petitioner

Vs

The Inspector of Police,
Kariyapattinam Police Station,
Nagapattinam District.
Cr.No.173 of 2021.

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w.401 Cr.P.C. to call for the records and set aside the order dated 28.09.2022 passed by the learned Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.3055 of 2022 in Crime No.173 of 2021 and to return the Tractor with Tipper bearing Registration No.TN-19-AD-4770, Chasis No.MAT448178H3B05467 and Engine No.B591803271 B63580226 to the custody of the petitioner.

For Petitioner : Mr.N.Palanivel

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



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ORDER

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This Criminal Revision case has been filed challenging the order of dismissal dated 28.09.2022 passed by the Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.3055 of 2022 seeking return of the vehicle viz., Tipper Lorry bearing Registration No.TN-19-AD-4770, Chasis No.MAT448178H3B05467 and Engine No.B591803271 B63580226.

2.The fact of the case is that the petitioner is the owner of the Tipper Lorry bearing Registration No.TN-19-AD-4770, Chasis No.MAT448178H3B05467 and Engine No.B591803271 B63580226. The respondent police registered a case in Cr.No.173 of 2021 on 12.04.2021 for the offence under section 379 IPC and 21 (1) of the Mines and Mineral (Development & Regulation) Act, against the petitioner/A4 along with the other accused for illegal transportation of 4 unit of savudu 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 is kept under the custody of the Court below. Since the petitioner is the owner of the vehicle, he filed a petition in Crl.M.P.No.3055 of



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2022 before the Principal District and Sessions Judge, Nagapattinam for return of property. The trial court dismissed the 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 12.04.2021 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 Savudu sand and if the vehicle is ordered to be returned, she 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 Kathiripulam Viyazhan Sandhaiyadi, on receiving secret information regarding sand theft, went to Kathiripulam Kamatchi Amman Temple from East to West, where, they found the accused persons were illegally transporting the Savudu sand and on seeing the police, all of them escaped from the spot. Pursuant to which, they have seized vehicle involved in sand theft and registered a case against the owners of the vehicle in Cr.No.173 of 2021 for the offence u/s.379 of IPC and 21 (1) of the Mines Minerals (Development & Regulation) Act, 1957. The petitioner is the owner of the Tipper Lorry bearing Registration No.TN-19-AD-4770, Chasis



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No.MAT448178H3B05467 and Engine No.B591803271 B63580226 . After seizure, it was produced before the court below and it has been kept under custody.

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



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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.

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 Registration No.TN-19-AD-4770, Chasis No.MAT448178H3B05467 and Engine No.B591803271 B63580226 Tipper Lorry 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 personal bond for a sum of Rs.10,00,000/-(Rupees ten lakhs only) before the Principal District and Sessions Judge, Nagapattinam..
- iii.The abovesaid court is directed not to insist upon the petitioner for producing solvency certificate while releasing the vehicle.
- iv.The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.
- v. the petitioner may take photograph of the vehicle and certified under Section 65B of the Central Act 1 of 1972



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and such photographs may be used as secondary evidence.

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vi.the petitioner shall not alienate or encumber the vehicle in any manner;

vii.the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future;

viii.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

Speaking order / Non speaking order

To

1. The Principal District and Sessions Judge, Nagapattinam.

2.The Inspector of Police,
Kariyapattinam Police Station,
Nagapattinam District.

3. The Public Prosecutor,
Madras High Court,
Chennai.

V. SIVAGNANAM, J.



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