



Crl.R.C.No.522 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.522 of 2023

Pazhaniyandi

... Petitioner

Vs.

The State,
rep by the Sub Inspector of Police,
Periyathachur Police Station,
Villupuram District.
Crime No.38 of 2023

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order passed by the learned Judicial Magistrate No.II, Tindivanam in Crl.M.P.No.1140/2023 dated 28.02.2023 and subsequently, grant custody of the vehicle Tractor and Tipper(new Holond) bearing registration No.TN-32-J-1208 to the petitioner herein.

For Petitioner : Mr.R.Sasikumar

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl.Side)



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ORDER

The Criminal Revision Case has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Tindivanam in Crl.M.P.No.1140/2023 dated 28.02.2023 and subsequently, grant custody of the vehicle Tractor and Tipper(new Holond) bearing registration No.TN-32-J-1208 to the petitioner herein.

2.It is the case of the prosecution that on 09.02.2023, respondent police registered a case in Crime no.38 of 2023 for the offences under Section 430 and 379 IPC and seized the vehicle namely Tractor and Tipper(new Holland) bearing registration No.TN-32-J-1208 for illegal transportation of river sand from one Kalidoss/accused. The accused was arrested and sent to judicial custody.

3.The learned counsel for the petitioner submitted that the petitioner is the owner of the vehicle namely Tractor and Tipper(new Holland



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registration No.TN-32-J-1208. The respondent police registered a case in Crime no.38 of 2023 for the offences under Section 430 and 379 IPC and seized the vehicle namely Tractor and Tipper(new Holland) bearing registration No.TN-32-J-1208. The petitioner had filed an application in Crl.MP.No.1140 of 2023 for interim custody of the vehicle before the trial Court. The trial Court dismissed the said application on the ground that the petitioner has not proved the ownership of the vehicle and also with regard to return of vehicles involved in mines and minerals theft, the power is vested only with the Special Court and also the private persons are not entitled to transport such Mines and Minerals without proper license.

4.The learned counsel further submitted that the petitioner is not the accused in this case and if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle. Further, 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



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police or before the Trial Court. Hence, he prayed to return the vehicle to the petitioner. Hence, the learned counsel has prayed to set aside the interim order dated and grant interim custody of the vehicle and to allow the revision petition.

5.The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the petitioner is the owner of the vehicle namely Tractor and Tipper(new Holland) bearing registration No.TN-32-J-1208 and since the above said vehicle was used to transport the river sand illegally, it was seized and 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 a perusal of the records, it reveals that the respondent police registered a case in Crime Crime no.38 of 2023 for the offences under



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Section 430 and 379 IPC and seized the vehicle namely Tractor and Tipper(new Holland) bearing registration No.TN-32-J-1208 for illegal transportation of river sand. Further, it reveals from the records that the petitioner is not an accused in this case and he is the owner of the Tractor and Tipper(new Holland) bearing registration No.TN-32-J-1208 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.1140 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 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 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, this Court is inclined to allow the



Revision Petition.

9. Accordingly, this Criminal Original Petition is allowed and the impugned order passed by the learned Judicial Magistrate II, Tindivanam in Crl.MP No.1140 of 2023 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 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 II, Tindivanam.
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle namely Tractor and Tipper(new Holland) bearing registration No.TN-32-J-1208 and such panchanama can be used in evidence.
- iv. the petitioner shall take photograph of the Tractor and Tipper(new Holland) bearing registration No.TN-32-J-1208 and certified



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under Section 65B of the Central At 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 police.

31.03.2023

Index: Yes/No
Internet: Yes/No
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Issue order copy on 03.04.2023



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To

1.The Sub Inspector of Police,
Periyathachur Police Station,
Villupuram District.
Crime No.38 of 2023

2.The Judicial Magistrate II, Tindivanam.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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