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Crl.R.C.No.663 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.RC.No.663 of 2023

Sankar

... Petitioner

Vs.

The Inspector of Police,
Sankarapuram Police Station,
Sankarapuram.
Crime No.318 of 2019

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the Order dated 14.07.2021 made in Crl.M.P.No.1976 of 2021 on the file of the learned Judicial Magistrate, Sankarapuram and consequently direct the respondent police to return petitioner's tractor bearing registration No.TN 21 C 3908 along with tipper bearing Registration No.TN 32-AY-5313, Engine No.SDS 1104, Chasis No.SDS 1104 along with tipper bearing Registration No.TN 32-AY-5313 by allowing this Criminal Revision.

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For Petitioner : Mr.V.Gunasekar
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 learned Judicial Magistrate, Sankarapuram dated 14.07.2021 made in Crl.M.P.No.1976 of 2021 and to return the vehicle tractor bearing registration No.TN 21 C 3908 along with tipper bearing Registration No.TN 32-AY-5313 to the petitioner /owner of vehicle.

2. It is the case of the prosecution that on 12.10.2022, when the respondent police went to patrol, they found the petitioner illegally transporting one unit of river sand in the tractor bearing registration No.TN 21 C 3908 along with tipper bearing Registration No.TN 32-AY-5313 and hence a case in Crime No.318 of 2019 was registered for the offences under



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Section 379 of IPC read with Section 21[1] of Mines and Minerals [Development and Regulation] Act and the vehicle was seized.

3. The petitioner is the owner of the above said tractor and tipper and he filed a petition in Crl.M.P.No.1976 of 2021 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 14.07.2021 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 is the owner of the tractor bearing registration No.TN 21 C 3908 along with tipper bearing Registration No.TN 32-AY-5313 . He further submitted that the tractor and tipper was used for agricultural purpose and the vehicle is not involved in any case of similar in nature and the petitioner is ready to give appropriate guarantee as well as security for return of vehicle and also



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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 [Criminal Side] appearing for the respondent submitted that the petitioner is owner of the tractor bearing registration No.TN 21 C 3908 along with tipper bearing Registration No.TN 32-AY-5313 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. He further submitted that the vehicle is not involved in any previous case of similar nature.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate [Criminal Side] appearing for the respondent and I have perused the materials on record.



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7. A perusal of the records shows that, the respondent police registered a case in Crime No.318 of 2019 for the offences under Section 379 of IPC read with Section 21[1] of Mines and Minerals [Development and Regulation] Act, with regard to transportation of river sand illegally. Further, it reveals from the records that the petitioner is the owner of the tractor bearing registration No.TN 21 C 3908 along with tipper bearing Registration No.TN 32-AY-5313 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.1976 of 2021, filed by the petitioner, on the ground that the petition is 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 tractor was used for agricultural purpose 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.



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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*** wherein the Hon'ble Supreme Court 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 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.

10. Accordingly, this Criminal Original Petition is allowed and the impugned order passed by the Trial Court is set aside. The respondent police is directed to return the tractor along with the tipper to the owner 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 execute a personal bond for a sum of Rs.4,00,000/- (Rupees four lakhs only) before the learned Judicial Magistrate, Sankarapuram and the learned Magistrate shall not insist on production of solvency certificate.
- 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 shall take photograph of the vehicle and certified 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,



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vii. 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
vrc

To

1. The Judicial Magistrate, Sankarapuram
2. The Inspector of Police, Sankarapuram Police Station, Sankarapuram.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

VTC

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