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CRL.R.C.No.604 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.604 of 2023

Senthilkumar

.. Petitioner

Vs

The State, Rep. by
Inspector of Police,
Periyathachur Police Station,
Tindivanam.

Crime No.6 of 2023

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w.401 Cr.P.C. to set aside the order dated 01.03.2023 passed by the Court of Judicial Magistrate No.II, Tindivanam in Cr.M.P.No.1374 of 2022 in Crime No.6 of 2023 on the file of the Sub Inspector of Police, Periyathachur Police Station, Tindivanam and direct the release Mahindra Arjun Novo 605 DII4WD, Engine No.NNMZWBE0151 Chassis No.MBNWHBDHFNNM01359, Vehicle Type:MISC, Tractor with tipper to the petitioner.

For Petitioner : Mr.J.Milton Arul Rajendran

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 01.03.2023 passed by the Judicial Magistrate No.II, Tindivanam in Cr.M.P.No.1374 of 2022 seeking interim custody of the vehicle viz., Tractor and Tipper, Mahindra Arjun Novo 605 DII4WD, Engine No.NNMZWBE0151, Chassis No.MBNWHBDHFNNM01359, Vehicle Type:MISC.

2.The fact of the case is that the petitioner is the owner of the Tractor and Tipper Mahindra Arjun Novo 605 DII4WD, Engine No.NNMZWBE0151 Chassis No.MBNWHBDHFNNM01359, Vehicle Type:MISC. The respondent police registered a case in Cr.No.6 of 2023 on 01.03.2023 for the offence under Sections 379 and 430 IPC r/w. 21(1) Mines & Minerals (Development & Regulations) Act against one Venkatesan A1 and Chandru A2 for illegal transportation of 1 unit of river 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. The petitioner who is the owner of the vehicle is not an accused in the said case. Now the vehicle is kept under the custody of the court below in P.R.No.66 of 2023. Since the petitioner is



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the owner of the vehicle, he filed a petition in Cr.M.P.No.1374 of 2022 before the Judicial Magistrate No.1I, Tindivanam for return of property in P.R.No.66 of 2023. The trial court dismissed the petition on the ground that the said vehicle is involved in 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 01.03.2023 in P.R.No.66 of 2023 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



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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 river 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 Palapattu Village, on receiving secret information regarding sand theft, they went to Palapattu Village, Sankarabharani river and on seeing the Police, the driver who drove the vehicle tried to escape from the spot. The respondent Police caught hold the accused and they have seized vehicle involved in sand theft and registered a case against the driver and another person. The petitioner is the owner of the tractor and Tipper bearing Engine No. NNMZWBE0151 Chassis No.



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MBNWHBDHFNNM01359. After seizure, it was produced before the court below in P.R.No.66 of 2023 and it has been kept under custody from 01.03.2023 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



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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 Engine No.NNMZWBE0151 Chassis No.MBNWHBDHFNNM01359 Tractor and Tipper 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 R.C.Book and other relevant records;
- ii. the petitioner shall execute a personal bond for a sum of Rs.11,00,000/-(Rupees Eleven lakhs only) for Tractor and Rs.3,00,000/- (Rupees Three lakhs only) for Tipper before the Judicial Magistrate No.II, Tindivanam.
- 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 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.

19.04.2023

vum

Index: yes/no

Speaking order / Non speaking order

V. SIVAGNANAM, J.

vum

To

1. The Judicial Magistrate No.II, Tindivanam.

2.The Inspector of Police,
Periyathachur Police Station,
Tindivanam.

3. The Public Prosecutor,

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Madras High Court.



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