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CRL.R.C.NO.728 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.728 OF 2023

Anbzhagan

.. Petitioner

Vs.

The State Rep. By
The Inspector of Police
Aanaikaranchathiram P.S.
Crime No.238/2022

.. Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C. to set aside the order dated 14.10.2022 passed in Cr.M.P.No.3360 of 2022 on the file of the Principal District and Sessions Judge, Nagapattinam.

For Petitioner : Mr.D.Senthil Kumar

For Respondent : Mr.R.Vinothraja
Government Advocate (Criminal Side)



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ORDER

This Criminal Revision Case has been filed challenging the order of dismissal dated 14.10.2022 passed by the learned Principal District and Sessions Judge, Nagapattinam, in Cr.M.P.No.3360 of 2022, seeking return of the vehicle viz. Tipper Lorry bearing Registration No.TN32-E-0311 to the petitioner.

2.The fact of the case is that the petitioner is the owner of the Tipper Lorry bearing Registration No.TN32-E-0311. The respondent police registered a case in Crime No.238/2022 on 09.07.2022 for the offences under Sections 379 and 430 IPC read with 21(1) of Mines and Minerals (D&R) Act, 1957, for illegal transportation of 3 Units of river sand without any valid permit. They have seized the above said vehicle alleging that the vehicle has been engaged in illegal transportation of sand. Since the petitioner is the owner of the vehicle, he filed a petition in Crl.M.P.No.3360 of 2022 before the learned Principal District and Sessions Judge, Nagapattinam, for return of the vehicle and the same dismissed by the Trial Court.



3.The learned counsel for the petitioner submitted that the vehicle is not involved in any previous case of offence of similar in nature 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.

5.The learned Government Advocate (Criminal Side) 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 the same offence. He fairly conceded that the vehicle is not involved in any previous case of similar in nature.



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6.Heard both sides and perused the entire materials available on record.

7.A perusal of the records would reveal that the respondent police, on receiving secret information regarding sand theft, conducted police patrolling and seized the Tipper Lorry bearing Registration No.TN32-E-0311 in possession of 3 Units of river sand and registered a case against the owner of the vehicle in Crime No.238 of 2022 under Sections 379 and 430 IPC read with Section 21(1) of Mines and Minerals (D&R) Act, 1957. The petitioner is the owner of the Tipper Lorry bearing Registration No.TN32-E-0311.

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 Hon'ble Supreme Court in ***SUNDERBHAI AMBALAL DESAI AND OTHERS VS. STATE OF GUJARAT IN SPECIAL LEAVE***



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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 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 Tipper Lorry bearing Registration No.TN32-E-0311 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.8,00,000/- (Rupees Eight 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 and such photographs may be used as secondary evidence.

(vi) the petitioner shall not alienate or encumber the



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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.

24.04.2023

Index : Yes/No

Internet : Yes/No

TK

To

1.The Principal District and Sessions Judge
Nagapattinam.

2.The Inspector of Police
Aanaikaranchathiram P.S.

3.The Public Prosecutor
High Court of Madras.

V. SIVAGNANAM, J.

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