



Crl.R.C.No.707 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.707 of 2023

M.Senthil

...

Petitioner

Vs

State rep.by
The Inspector of Police,
Varanjaram Police Station,
Kallakurichi District.
Crime No.51 of 2022

...

Respondent

Prayer: Criminal Revision Case filed under section 397 r/w 401 Cr.P.C. To set aside the order passed in C.M.P.No.936 of 2023 dated 10.03.2023 on the file of the Judicial Magistrate No.I (FTC), Kallakurichi and set aside the same.

For Petitioner : Mr. K.Amirthalingam

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



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ORDER

Challenging the order dated 10.03.2023 passed in C.M.P.No.936 of 2023 by the Judicial Magistrate No.I, (FTC), Kallakurichi, this Criminal Revision Case has been filed

2.The prosecution case is that the respondent police registered a case in Cr.No.51/2022 on 22.05.2022 for the offence under section 379 IPC against the petitioner, who indulged the vehicle for illegal transportation of one unit of river sand without valid permit. Pursuant to which, they have seized the abovesaid vehicle alleging that the vehicle has been engaged in illegal transportation of one unit of river sand. Now, the vehicle was kept under the custody of the court below in C.P.No.02 of 2023. Since the petitioner is the owner of the vehicle, he filed a petition in Crl.MP.No.936 of 2023 before the Judicial Magistrate No.1 (FTC), Kallakurichi for return of property. The trial court dismissed the petition on the ground that the petitioner has committed theft of one unit river sand in his vehicle without proper and valid license and objection has been made by the respondent to return the vehicle.



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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 in C.P.No.02 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 condition imposed on him by this Court.

5. The learned Govt. Advocate (Crl.side) objected to return of vehicle,



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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 a complaint was given by Mr.Prabhakaran, Sub Inspector of Police, Varanjaram Police Station, stating that while he was conducting inspection along with his team in Old Utchimedu village, Kallakurichi, they inspected Mahindra Tractor bearing registration No.TN – 15 – P -7711 along with Tipper, which was not having registration number and found an illegal transportation of one unit river sand and on seeing them, the driver of the tractor escaped from the occurrence spot and thereafter, the tractor along with Tipper was seized and handed over to the respondent police. Pursuant to which, a case has been registered by the respondent police on 22.05.2022 in Cr.No.51 of 2022 for the offence under Section 379 IPC. The petitioner is the owner of the tractor bearing registration



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No.TN-15-P-7711 Mahindra 575 D1 and Tipper. After seizure, the vehicle was produced before the court below in C.P.No.02 of 2023 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



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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 10.03.2023 passed in C.M.P.No.936 of 2023 by the Judicial Magistrate No.1 (FTC), Kallakurichi, is hereby set aside. The interim custody of the Mahindra Tractor bearing Regn.No.TN-15-P-7711 along with 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 the R.C.Book and other relevant records;
- ii. the petitioner shall execute a personal bond for a sum of Rs.5,00,000/-(Rupees Five lakhs only) before the Judicial Magistrate No.1 (FTC), Kallakurichi and the learned Magistrate shall not insist for 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



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be used in evidence.

- iv. 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.
- 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.

Index: yes/no

Internet: yes/no

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To

1. The Judicial Magistrate No.I (FTC),
Kallakurichi.

2. The Inspector of Police,
Varanjaram Police Station,
Kallakurichi District.
Crime No.51 of 2022.

3. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.



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