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Crl.R.C.No.767 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.RC.No .767 of 2023

Selvam
Petitioner

...

Vs.

The Inspector of Police,
Ulundurpet Police Station,
Kallakurichi District.
Crime No.295 of 2022
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the Order dated 09.09.2022 made in C.M.P.No.2839 of 2022 on the file of the learned Judicial Magistrate No.I, Ulundurpet and subsequently grant custody of the vehicle Ashok Leyland Lorry bearing registration No.TN 54 Z 2206 to the petitioner.



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For Petitioner : Mr.S.Saravana Kumar
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 Judicial Magistrate No.I, Ulundurpet dated 09.09.2022 made in C.M.P.No.2839 of 2022 and to return the vehicle vehicle Ashok Lelyland Lorry bearing registration No.TN 54 Z 2206 to the petitioner /owner of vehicle.

2. It is the case of the prosecution that on 07.07.2022, on secret information when the Tahsildar went to patrol, he found the petitioner illegally transporting half unit of pebble in the vehicle Ashok Lelyland Lorry bearing registration No.TN 54 Z 2206 without any valid invoice and permit and hence a case in Crime No.295 of 2022 was registered for the offences



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under Section 379 of IPC and the vehicle was seized.

3. The petitioner is the owner of the above said lorry and he filed a petition in C.M.P.No.2839 of 2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 09.09.2022 on the ground that the Magistrate Court has no jurisdiction to release the property involved in Mines and Minerals Act. 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 vehicle Ashok Leyland Lorry bearing registration No.TN 54 Z 2206. He further submitted that the lorry was purchased under hypothecation and he has to pay the EMI and if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle and that 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 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



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vehicle to the petitioner.

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5. The learned Government Advocate [Criminal Side] appearing for the respondent submitted that the petitioner is owner of the vehicle Ashok Leyland Lorry bearing registration No.TN 54 Z 2206 and since the above said vehicle was used to transport the pebbles without valid invoice and permit, 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.

7. A perusal of the records shows that, the respondent police registered a case in Crime No.295 of 2022 for the offences under Section 379 of IPC with regard to transportation of pebbles illegally. Further, it reveals from the records that the petitioner is the owner of the vehicle Ashok



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Leyland Lorry bearing registration No.TN 54 Z 2206 and it was seized by the respondent police. The Trial Court dismissed the petition in C.M.P.No.2839 of 2022, filed by the petitioner, on the ground that the Magistrate Court has no jurisdiction to release the property involved in Mines and Minerals Act. 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*** 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



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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 Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The respondent police is directed to return the vehicle to the owner 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.10,00,000/- (Rupees ten lakhs only) before the learned Judicial Magistrate No.I, Ulundurpet and the learned Magistrate shall not insist on production of solvency certificate.



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- 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 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.

26.04.2023

Index: Yes/No
Internet: Yes/No
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To
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1. The Judicial Magistrate No.I, Ulundurpet
2. The Inspector of Police,
UlundurpetPolice Station.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

VTC

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