



Crl.R.C.No.815 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.815 OF 2023

Prabhakaran

.. Petitioner

Vs

The State of Tamil Nadu,
represented by the Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai District
(Cr.No.289 of 2022)

... Respondent

Prayer: Criminal Revision Case filed under section 397 and 401 Cr.P.C. to allow the criminal revision petition and set aside the order passed in crl.M.P.No.2737 of 2022 on the file of the Principal District and Sessions Judge, Nagapattinam, dated 07.09.2022 and grant interim custody of the vehicle bearing Regn.No.TN 31 AH 3898 in favour of the petitioner.

For Petitioner : Mr.U. Kathiravan

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



Crl.R.C.No.815 of 2023

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ORDER

This Criminal Revision case has been filed challenging the order of dismissal dated 07.09.2022 passed by the Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.2737 of 2022 seeking interim custody of the vehicle bearing Regn.No.TN 31 AH 3898.

2.The fact of the case is that the petitioner is the owner of the Tipper lorry bearing Regn.No.TN 31 AH 3898. The respondent police registered a case in Cr.No.289/2022 on 28.08.2022 for the offence under section 379 IPC against the driver and owner of the above said vehicle, who indulged the vehicle for illegal transportation of river sand without valid permit. Pursuant to which, they have seized the above said vehicle alleging that the vehicle has been engaged in illegal transportation of 2 units of river sand. Since the petitioner is the owner of the vehicle, he filed a petition in Crl.MP.No.2737 of 2022 before the Principal District and Sessions Judge, Nagapattinam seeking return of vehicle. The trial court dismissed the petition on the ground that the petitioner's vehicle has been used for illegal transportation of sand and if the



Crl.R.C.No.815 of 2023

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vehicle is released, there may be possibility of redeployment of the said vehicle for committing the same offence.

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 respondent police 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.



Crl.R.C.No.815 of 2023

WEB COPY

5. The learned Govt. Advocate (Crl.side) objected to return of vehicle, stating that the vehicle was used for illegal transportation of 2 units 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.

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

7. A perusal of the records would reveal that based on a secret information regarding illegal transportation of sand, the respondent police patrolled the place near Pattavarthi, Mathagadi, while so, they intercepted a tipper lorry bearing Regn.No.TN 31 AH 3898 which was engaged in illegal transportation of 2 units of river sand. Pursuant to which, the abovesaid vehicle was seized and handed over to the respondent police and a case has been registered by the respondent police on 28.08.2022 in Cr.No.289 of 2022 for the offence u/s.379 of IPC. The petitioner is the owner of the Tipper lorry bearing Regn.No.TN 31 AH 3898. Now the vehicle has been kept under the



CrI.R.C.No.815 of 2023

custody of the respondent police.

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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



CrI.R.C.No.815 of 2023

WEB COPY

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 tipper lorry bearing Regn.No.TN 31 AH 3898 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.10,00,000/-(Rupees ten lakhs only) before the Principal District and Sessions Judge, Nagapattinam and the learned Sessions Judge 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 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.



CrI.R.C.No.815 of 2023

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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.

28.04.2023

msr

Index: yes/no

Internet:yes/no

To

1. The Principal District and Sessions Judge,
Nagapattinam.
- 2.The Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai District.
3. The Public Prosecutor,
Madras High Court.



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CrI.R.C.No.815 of 2023

V. SIVAGNANAM, J.

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CRL.R.C.NO.815 OF 2023

28.04.2023