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Crl.R.C.No.1025 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.RC.No.1025 of 2023

Selvam
Petitioner

...

Vs.

State rep by its the Inspector of Police,
Kanchi Taluk Police Station.
Kancheepuram.
Crime No.2332 of 2020
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records pertaining to the dismissal Order passed by the learned Principal Sessions Judge, Kancheepuram District at Chengalpet in Crl.M.P.No.1123 of 2022 dated 27.09.2022 and set aside the same.

For Petitioner : Mr.K.Thenrajan



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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 Principal Sessions Judge, Kancheepuram District at Chengalpet dated 27.09.2022 made in Crl.M.P.No.1123 of 2022 and to return the JCB bearing registration No.TN 20 CH 8772 to the petitioner /owner of vehicle.

2. It is the case of the prosecution that on 05.09.2020, the respondent police registered a case in Crime No.2332 of 2020 for the offences under sections 430, 379 of IPC and 21[1] of Mines and Mineral Act and 3[1] of TNPPDL Act and seized JCB bearing registration No.TN 20 CH 8772.

3. The father of the petitioner is the owner of the above said JCB and he filed a petition in Crl.M.P.No.1123 of 2022 before the trial Court to



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release the vehicle to him. But it was dismissed, vide order dated 27.09.2022 on the ground that the petitioner had failed to put forth valid and acceptable reason to strengthen his claim. Hence, challenging the above said order, the petitioner filed the present Revision case.

4. The learned counsel for the petitioner submitted that the father of the petitioner is the owner of the vehicle Tipper JCB bearing registration No.TN 20 CH 8772. He further submitted that the other legal heirs of the father of the petitioner have filed an affidavit to the effect that they have no objection to return the JCB to the petitioner. He further submitted that 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 vehicle to the petitioner.



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5. The learned Government Advocate [Criminal Side] appearing for the respondent submitted that the father of the petitioner is owner of the JCB bearing registration No.TN 20 CH 8772 and since the above said vehicle was used to transporting sand 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.2332 of 2020 for the offences under sections 430, 379 of IPC and 21[1] of Mines and Mineral Act and 3[1] of TNPPDL Act with regard to transportation of sand. Further, it reveals from the records that the father of the petitioner is the owner of the JCB bearing registration No.TN 20 CH 8772 and it was seized by the respondent police.



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The Trial Court dismissed the petition filed by the petitioner in Crl.M.P.No.1123 of 2022, filed by the petitioner, on the ground that the petitioner had failed to put forth valid and acceptable reason to strengthen his claim. The petitioner has also filed the affidavit of other legal heirs of the father of the petitioner to the effect that they have no objection to return the JCB to the petitioner. 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



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 Original Petition 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.15,00,000/- (Rupees fifteen lakhs only) before the learned Principal Sessions Judge, Kancheepuram District at Chengalpet and the learned Judge shall not insist on 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



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evidence.

- iv. the petitioner shall take photograph of the vehicle and certified under Section 65B of the Central At 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.

21.06.2023

Index: Yes/No

Internet: Yes/No

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To

1. The Principal Sessions Judge , Kancheepuram District at Chengalpet.

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2. The Inspector of Police,
Kanchi Taluk Police Station.
Kancheepuram.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

VTC

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