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CRL.R.C.NO.718 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.718 OF 2023

K.Subikumar

.. Petitioner

Vs.

State represented by
Inspector of Police
CSCID – Chennai
Namakkal Unit,
Namakkal District.
Crime No.8 of 2023

.. Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C. to set aside the order dated 06.04.2023 made in C.M.P.No.2766 of 2023 on the file of the Judicial Magistrate No.II, Namakkal.

For Petitioner : Mr.T.Gopinathan

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 06.04.2023 passed by the learned Judicial Magistrate No.II, Namakkal, in C.M.P.No.2766 of 2023, seeking return of the vehicle viz., Ashok Leyland Tanker (HGV) bearing Registration No.TN48-AZ-5865, to the petitioner.

2.The case of the prosecution is that the petitioner is the owner of the vehicle viz., Ashok Leyland Tanker (HGV) bearing Registration No.TN48-AZ-5865. The respondent police registered a case in Crime No.8 of 2023 for the offence under Section 3(4) of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1995 against three accused persons. On 14.01.2023 at about 12.00 hours, on receipt of secret information about the illegal transportation of adulterated Diesel without valid permit in Ashok Leyland Tanker (HGV) bearing Registration No.TN48-AZ-5865, the respondent police went to the scene of



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occurrence and on seeing the police, the accused persons trying to escape from that place and immediately, the respondent caught hold of the accused persons and found that they were transferring approximately 2000 Ltrs., of adulterated Diesel to another Lorry, without any license/permit. Subsequently, the respondent has seized the above said vehicle and the same is under the custody of the Trial Court in C.P.No.07/2023 from 20.01.2023 onwards. Since the petitioner is the owner of the vehicle viz., Ashok Leyland Tanker (HGV) bearing Registration No.TN48-AZ-5865, he filed a petition in C.M.P.No.2766 of 2023 before the learned Judicial Magistrate No.II, Namakkal, for return of the vehicle and the same dismissed by the Trial Court on 06.04.2023. Challenging the same, the petitioner is before this Court.

3.The learned counsel for the petitioner submitted that the petitioner is not an accused and 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.



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4.Further, the learned counsel for the petitioner contended that no useful 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.

5.The learned Government Advocate (Criminal Side) objected to return of vehicle stating that the vehicle was used for illegal transportation of adulterated Diesel and if the vehicle is ordered to be returned, he may use the vehicle for committing the same offence. He fairly conceded that the petitioner is not an accused and 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 the respondent



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police, on receiving secret information about the illegal transportation of adulterated Diesel without valid permit in Ashok Leyland Tanker (HGV) bearing Registration No.TN48-AZ-5865, seized the vehicle and registered a case in Crime No.8 of 2023 for the offence under Section 3(4) of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1995. The petitioner is the owner of the vehicle viz., Ashok Leyland Tanker (HGV) bearing Registration No.TN48-AZ-5865.

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 would be 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 [SPECIAL LEAVE PETITION (CRL.) NO.2745 OF 2022 DATED 01.10.2002]*** has held that in order to protect the property, the Apex Court has directed to handover the



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seized articles to the owner on proper Panchnama.

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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 viz., Ashok Leyland Tanker (HGV) bearing Registration No.TN48-AZ-5865 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



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records;

(ii) the petitioner shall execute a personal bond for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) before the Judicial Magistrate Court No.II, Namakkal;

(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 vehicle in any manner;

(vii) the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in



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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 Judicial Magistrate No.II
Namakkal.

2.Inspector of Police
CSCID – Chennai
Namakkal Unit,
Namakkal District.

3.The Public Prosecutor
High Court of Madras.



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V. SIVAGNANAM, J.

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