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Crl.R.C.No.810 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.810 of 2023

K.Madhu

...

Petitioner

/vs/

The State by Inspector of Police,
Magudamchavadi Police Station,
Salem District
(Cr.No.311 of 2021)

...

Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 407 of Cr.P.C., praying to set aside the order dated 16.03.2023 made in C.M.P.No.475 of 2023 on the file of the District Judicial Magistrate No.II, Sankari by allowing this Criminal Revision Petition.

For Petitioner ... M/s.R.Madhubala

For Respondent ... Mr.R.Vinothraja

Govt. Advocate (crl.side)



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ORDER

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This Criminal Revision Case is filed by the petitioner seeking to call for the records relating to the order dated 16.03.2023 made in C.M.P.No.475 of 2023 on the file of the learned Judicial Magistrate No.II, Sankari and set aside the same.

2.The learned counsel for the petitioner submitted that the petitioner is the 1st Accused in this case. The respondent-Police registered a case against the petitioner along with the other accused in Crime No.311 of 2021 for the offence under Section 379 of I.P.C for illegally transporting gravel soil. The respondent-Police, while arresting the accused persons, seized the JCB 3DX Excavator Loader, bearing Registration No.TN-30-AH-1896 along with the properties. The petitioner is the owner of the vehicle. The vehicle has been kept in a open place in the respondent Police Station. If the vehicle is kept for a long time in the open space, it would cause damage to the vehicle.

3.The petitioner has filed a petition in C.M.P.No.475 of 2023



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before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 16.03.2023 on the ground that with regard to return of vehicles involved in mines and minerals theft, the power is vested only with the Special Court. Hence, challenging the above said order, the petitioner filed the present Revision case.

4.The learned Government Advocate (Crl.Side) submitted that the petitioner is owner of the JCB 3DX Excavator Loader, bearing Registration No.TN-30-AH-1896 and since the above said vehicle was used to transport gravel soil illegally without any valid permit, it was seized and now, investigation is pending. Hence, he objected to return the vehicle to him.

5.I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondent.

6.On perusal of the records, the fact reveals that the case of the



prosecution is that on 24.07.2021 at about 04.30 hours, the respondent- Police has received a secret information about the illegal extraction of soil near Mattaiyampatti, Salem District. The Police team went to the scene of occurrence where they found that the accused persons were illegally extracting and loading the gravel soil in the tipper lorry and JCB on seeing the police, they tried to escape from the spot and the respondent Police caught them and seized the Tipper Lorry and JCB 3DX Excavator Loader, bearing Registration No.TN-30-AH-1896. Based on the above, a case was registered in Crime No.311 of 2021, under Section 379 I.P.C against the accused. Now, the vehicle is in the custody of the respondent-Police.

7.Considering the nature of the case that the petitioner is the owner of the JCB and also 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 and the value of the vehicle is diminished and continuing to keep the



vehicle in open air would make the vehicle unusable, this Court is inclined to grant interim custody of the vehicle to the petitioner.

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 Leave Petition (Crl.)2745 of 2022 dated 01.10.2002*** and the relevant portion is extracted hereunder.

Vehicles:

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be



*auctioned by the Court. If the said vehicle is insured with the insurance company, then insurance company be informed by the Court to take possession of the vehicle, which is not claimed by the owner or a third person. If insurance Company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. **In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.***

Therefore, 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 Criminal Revision Case.

9. In the result, this Criminal Revision Case is allowed and the



impugned order passed by the Trial Court is set aside. The learned Judge shall not insist upon the solvency certificate from the petitioner at the time of getting interim custody of the vehicle. The interim custody of the vehicle is ordered to be handed over to the petitioner 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 bond for a sum of Rs.10,00,000/- (Rupees ten lakhs only) before the learned Judicial Magistrate No.II, Sankari.
- 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 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



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manner;

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- 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 learned Judicial Magistrate No.II, Sankari
2. The Inspector of Police,
Magudamchavadi Police Station,
Salem District
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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