



Crl.R.C.No.895 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.895 of 2023

Balasubramaniam

... Petitioner

Vs

State rep.by
The Inspector of Police,
Kundadam Police Station,
Tiruppur District.
Crime No.74 of 2023

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w 401 Cr.P.C. To set aside the order passed in C.M.P.No.794 of 2023 on the file of the learned Judicial Magistrate Court, Dharapuram, dated 09.05.2023.

For Petitioner : Mr. C.Ramkumar

For Respondent : Mr. A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

Challenging the order dated 09.05.2023 passed in C.M.P.No.794 of 2023 by the Judicial Magistrate, Dharapuram, this Criminal Revision Case has been filed.

2.The prosecution case is that the respondent police registered a case in Cr.No.74/2023 on 11.04.2023 for the offence under section 379 IPC against one Boopathi, who indulged the vehicle for illegal transportation of one unit of sand without valid permit. Pursuant to which, they have seized the abovesaid vehicle alleging that the vehicle has been engaged in illegal transportation of one unit of sand. Now, the vehicle was kept under the custody of the court below in P.R.No.81 of 2023. The petitioner is the owner of the vehicle, he filed a petition in Crl.MP.No.794 of 2023 before the Judicial Magistrate, Dharapuram for return of property. The Trial court dismissed the petition on the ground that the vehicle is involved in sand theft and also on the objection made by the respondent to return the vehicle.

3.The learned counsel for the petitioner submitted that the vehicle is not



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involved in any previous case of offence of similar in nature. The vehicle has been kept under the custody of the court in P.R.No.81 of 2023 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.

5. The learned Additional Public Prosecutor objected to return of vehicle, stating that the vehicle was used for illegal transportation of sand and if the vehicle is ordered to be returned, he may use the vehicle for committing same offence. He fairly conceded that the vehicle is not involved in any



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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 a complaint was given by Chandrasekar, VAO, Suriyanaloo Vilage, stating that on secret information, he went to the spot and found one unit of sand in the Tractor, attached with the above said Tractor and thereafter, the tractor along with Tipper was seized and handed over to the respondent police. Pursuant to which, a case has been registered by the respondent police on 11.04.2023 in Cr.No.74 of 2022 for the offence under Section 379 IPC. The petitioner is the owner of the tractor bearing registration No.TN-33-AE-7596. After seizure, the vehicle was produced before the court below in P.R.No.81 of 2023 and it has been kept under custody.

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



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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 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 09.05.2023 passed in C.M.P.No.794 of 2023 by the Judicial



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Magistrate, Dharapuram, is hereby set aside. The interim custody of the Tractor bearing Regn.No.TN-33-AE-7596 along with tipper 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.5,00,000/-(Rupees Five lakhs only) before the Judicial Magistrate, Dharapuram and the learned Magistrate 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.
- 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.



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Index: yes/no
Internet:yes/no

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To

1. The Judicial Magistrate,
Dharapuram.
- 2.The Inspector of Police,
Kundadam Police Station,
Tiruppur District.
3. The Public Prosecutor,
Madras High Court.



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V. SIVAGNANAM, J.

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