



Crl.R.C.No.1217 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

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THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1217 of 2023

Thayalnayaki

... Petitioner

Vs.

State of Tamil Nadu
rep by the Inspector of Police,
Sembanarkoil Police Station,
Mayiladuthurai District.

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order passed in Crl.MP.No.4472 of 2022 on the file of the Principal District and Sessions Judge, Nagapattinam dated 23.12.2022 and grant interim custody of the vehicle bearing Reg.No.TN51-AJ-2175.

For Petitioner : Mr.U.Kathiravan

For Respondent : Mr.J.Subbiah, GA (Crl. Side)

ORDER

The petitioner / 3rd party has filed the present revision petition against the order passed by the learned Principal District and Sessions Judge, Nagapattinam in Crl.MP.No.4472 of 2022 dated 23.12.2022.



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2. The Inspector of Police, Sembanarkoil Police Station, Mayiladuthurai registered FIR in Cr.No.1144 of 2020 against the accused for transporting illegal sand in Ashok Leyland DOST lorry bearing Registration No.TN51-AJ-2175 and the vehicle was produced before the concerned jurisdictional magistrate.

3.The present revision petitioner filed the Crl.M.P.No.4472/2022 under Sections 451 and 457 of Cr.PC seeking return of vehicle from the custody of the police. The said petition was dismissed by the trial Court vide orders dated 23.12.2022.

4. Heard Mr.U.Kathiravan, learned counsel for the revision petitioner and Mr.J.Subbiah, learned Government Advocate (Crl. side) for the respondent.

5. Mr.U.Kathiravan, learned counsel for the revision petitioner contended that if the vehicle is kept in open space the value of the same



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would diminish over a period of time and therefore, the same may be returned.

6. The learned Government Advocate (Crl.side) did not raise any serious objection for return of vehicle and stated that the petitioner is the owner of the vehicle and that she is not involved in the crime as is seen from the FIR.

7. The present case is filed under Section 379 and 430 IPC and Section 21(1) of the Mines and Minerals (Development and Regulation) Act and from the records it is seen that the concerned revenue officials have to initiate confiscation proceedings as against the seized vehicle.

8. It is relevant to refer 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 relevant portion is extracted hereunder.



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“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.

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.”

9. Keeping the vehicle idle in an open space, would diminish the value of the vehicle over a period of time. As such, considering the



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ratio laid down by the Hon'ble Supreme Court, this Court is inclined to allow the Revision Petition.

10. Accordingly, this Criminal Revision Petition is allowed and the impugned order in Crl.M.P.No.4472/2022 dated 23.12.2022 passed by the learned Principal District and Sessions Judge, Nagapattinam, is set aside. The learned Principal District and Sessions Judge, Nagapattinam is directed to return the vehicle to the owner of the vehicle on the following conditions :

- i. the petitioner shall prove her 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.2,00,000/- (Rupees Two Lakhs Only) before the trial Court.
- iii. the Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing Registration No.TN51-AJ-2175 and such panchanama can be used in evidence.
- iv. the petitioner shall take photograph of the vehicle bearing Registration No. TN51-AJ-2175 and certified under Section



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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 she 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.

No costs.

10.07.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The Principal District and Sessions Judge, Nagapattinam.
2. Inspector of Police, Sembanarkoil Police Station, Mayiladuthurai.

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R. HEMALATHA, J.
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