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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2023

Coram:

The Hon'ble Mrs.Justice R.HEMALATHA

Crl.R.C.No.1232 of 2023

AK Infra Engineering Private Limited,
Rep. by Mr.Dinesh,
Son of Poongavanam
Kallayu Amman Kovil,
Keezhmampattu,
Kalladikuppam,
Anilady,
Villupuram – 605 651.

...Petitioner

Versus

State Rep. by
The Inspector of Police,
Periyathachur Police Station.
(Crime No.46 of 2023)

...Respondent

This Criminal Revision Case is filed under Sections 397 & 401 of Cr.P.C. praying to call for the entire records relating to the order dated 27.06.2023 passed in Crl.M.P.No.2172 of 2023 by the learned Judicial Magistrate – II, Tindivanam and set aside the same.

For Petitioner	:	Mr.K.M.Mohamed Ziauddin
For Respondent	:	Mr.R.Vinothraja, Government Advocate (Crl.Side)



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ORDER

This criminal revision has been filed by the petitioner praying to call for the entire records relating to the order dated 27.06.2023 passed in CrI.M.P.No.2172 of 2023 by the learned Judicial Magistrate – II, Tindivanam and set aside the same.

2. The learned Judicial Magistrate – II, Tindivanam vide orders dated 27.06.2023 dismissed the petition in CrI.M.P.No.2172 of 2023 filed under Sections 451 & 457 of Cr.P.C seeking interim custody of Tipper Lorry bearing Registration No.TN-22-DU-0821 which was seized by the Inspector of Police, Periyathachur Police Station in Crime No.46/2023 for the alleged offences punishable under Section 379 & 430 of I.P.C.

3. The case of the prosecution is that on 01.03.2023 at about 10.00 hours, when the Special Sub Inspector of Police, Periyathachur Police Station was on station duty, one Devaraj, Village Administrative Officer, Kalladikuppam, Gingee Taluk gave a complaint stating that based on an information, he and Mr.Karthikeyan, Revenue Inspector, Vallam went to



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Kalladikuppam Lake on 01.03.2023, where, they found the accused Gajapathy and Anandharaj smuggling ½ unit of Lake Sand in a Tipper Lorry bearing Registration No.TN-22-DU-0821 without obtaining proper license. Both of them fled away from the scene on seeing the Revenue Officers. Thereafter, they seized the Tipper Lorry and handed over the same to the Special Sub Inspector of Police, Periyathachur Police Station. On the basis of the complaint given by the complainant Devaraj, the Special Sub Inspector of Police, Periyathachur Police Station registered an FIR in Crime No.46 of 2023 against the said Gajapathy & Anandhraj for the offences under Sections 379 & 430 of I.P.C. Thereafter, the Inspector of Police, Periyathachur Police Station produced the seized vehicle before the Court of Judicial Magistrate No.II, Tindivanam. The present revision petitioner filed a petition in CrI.M.P.No.2172 of 2023 under Sections 451 & 457 of Cr.P.C. seeking interim custody of the aforesaid vehicle to the petitioner. However, the learned Judicial Magistrate vide orders dated 27.06.2023 dismissed the said petition on the following grounds :

(i) Though FIR was not registered under Mines and Minerals Act, 1957, it is a sand theft.



(ii) Mines and Minerals are National Assets. Private persons are not entitled to quarry such Mines and Minerals without proper license and without following the procedures and rules. Illegal Minings are causing great loss not only to the environment but also to the financial stability of our Country.

Aggrieved over the dismissal of Crl.M.P.No.2172 of 2023, the revision petitioner has filed the present petition.

4. Heard Mr.K.M.Mohamed Ziauddin, learned counsel for the revision petitioner and Mr.R.Vinothraja, learned Government Advocate (Crl. Side) appearing for the respondent.

5. It is relevant to refer a decision of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai and Ors. Vs. State of Gujarat in Special Leave Petition (Crl.)2745 of 2022 dated 01.10.2002***, wherein, the Hon'ble Apex Court has held as follows:

Vehicles

“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.”

6. Keeping the vehicle idle in an open space, would definitely diminish the value of the vehicle over a period of time. As such, considering the ratio laid down by the Hon'ble Supreme Court in the aforesaid decision, this Court is inclined to allow this criminal revision petition.



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7. Accordingly, this Criminal Revision Petition is allowed and the impugned order dated 27.06.2023 passed in CrI.M.P.No.2172 of 2023 by the learned Judicial Magistrate – II, Tindivanam is set aside. The learned Judicial Magistrate – II, Tindivanam is directed to return the vehicle to the owner of the vehicle on the following conditions :

(i) The petitioner shall prove its 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.50,000/- (Rupees Fifty Thousand Only) before the learned Judicial Magistrate No.II, Tindivanam;

(iii) The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle bearing registration No.TN-22-DU-0821 and such panchanama can be used in evidence;

(iv) The petitioner shall take photographs of the vehicle bearing registration No.TN-22-DU-0821 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 it will not use the vehicle for any illegal activities in future; and

(vii) The petitioner shall produce the vehicle as and when required before the court below and also, before the respondent police.

27.07.2023

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To

1.The Inspector of Police,
Periyathachur Police Station.

2.The Public Prosecutor,
High Court, Madras.



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R.HEMALATHA, J.

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