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Crl.R.C.No.1332 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

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

Crl.R.C.No.1332 of 2023

Asharaf Ali

... Petitioner

Vs.

The State Rep. by
the Sub Inspector of Police,
Brammadesam Police Station,
Villupuram District - 604 301.
Crime No.107 of 2023

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records and set aside the order dated 03.07.2023, passed in Crl.M.P.No.3891 of 2023 on the file of the learned Judicial Magistrate-II, Tindivanam.

For Petitioner : Mr.G.Mohammed Aseef

For Respondent : Mr.R.Vinothraja, GA (Crl. Side)

ORDER

Challenging the orders, dated 03.07.2023 in Crl.M.P.No.3891 of 2023 on the file of the Judicial Magistrate-II, Tindivanam, the present Criminal Revision is filed.



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2. The petitioner stating that he is the owner of the vehicle Ashok Leyland Tipper Lorry bearing Registration No.TN-72-AH-2880, filed a petition in Crl.M.P.No.3891 of 2023 under Sections 451 / 457 of Cr.P.C., seeking interim custody of the vehicle which was seized in connection with Crime No.107/2023 for the alleged offences punishable under Sections 379 I.P.C., r/w. Section 21 (1) of Mines and Minerals (Development and Regulation) Act, 1957. The said petition was dismissed by the Judicial Magistrate II, Tindivanam on 03.07.2023 on the ground that the vehicle was involved in the commission of offence punishable under Mines and Minerals Act.

3. Heard Mr.G.Mohammed Aseef, learned counsel for the revision petitioner and Mr.R.Vinothraja, learned Government Advocate (Crl. Side) learned counsel for the respondent.

4. The learned counsel for the revision petitioner contended that the present petitioner is not involved in any offence and that if the vehicle is kept in open space in the Police station, the value of the vehicle would



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diminish over a period of time. Therefore, he prayed for return of the vehicle.

5. Per contra, the learned Government Advocate (Crl. side) contended that the vehicle was used for illegal transportation of M sand and if the vehicle is ordered to be returned, he may use the vehicle for committing similar offence. He therefore sought for dismissal of the petition.

6. 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, it is held thus:

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



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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.”

7. In the light of the above decision and considering the facts and circumstances of the case and also the fact that the present petitioner is not an accused in this case, the vehicle may be returned to the petitioner with certain conditions. Accordingly, this Criminal Revision Petition is allowed and the impugned order dated 03.07.2023 passed by the learned Judicial Magistrate II, Tindivanam is set aside. The Judicial Magistrate II, Tindivanam, is directed to return the vehicle to the owner of



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the vehicle on the following conditions :

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- 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.1,00,000/- (Rupees One Lakh Only) before the learned Judicial Magistrate II, Tindivanam.
- iii) the Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle viz., Ashok Leyland Tipper Lorry bearing Registration No. TN-72-AH-2880 and such panchanama can be used in evidence.
- iv) the petitioner shall take photograph of the vehicle bearing registration No. TN-72-AH-2880 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



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vehicle for any illegal activities in future;

vii) the petitioner shall also produce the vehicle as and when required by the court below and by the respondent police.

02.08.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

To

1. The Judicial Magistrate II, Tindivanam.
2. The Sub Inspector of Police,
Brammadesam Police Station,
Villupuram District - 604 301.
3. The Section Officer,
Criminal Section, High Court,
Madras.

R. HEMALATHA, J.



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