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Crl.R.C.No.1386 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

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

Crl.R.C.No.1386 of 2023

Govindarasu

... Petitioner

Vs.

The State Rep. by
the Inspector of Police,
Ulundurpet Police Station,
Kallakurichi District.
Crime No.374/2023

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.I, Ulundurpet in C.M.P.No.3422 of 2023 dated 07.07.2023 and subsequently grant custody of vehicle Ashok Leyland Lorry bearing registration No.TN 46 L 5601 to the petitioner.

For Petitioner : Mr.S.Saravana kumar

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

ORDER

Challenging the orders, dated 07.07.2023 passed in C.M.P.No.3422 of 2023 by the learned Judicial Magistrate No.I, Ulundurpet, the present Criminal Revision is filed.



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2. The revision petitioner filed the petition in C.M.P.No.3422 of 2023 under Sections 451 of Cr.P.C., seeking interim custody of the vehicle viz., Ashok Leyland Lorry bearing Reg.No. TN 46 L 5601. The said petition was dismissed by the learned Judicial Magistrate No.I, Ulundurpet on 07.07.2023 on the ground that the investigation is at preliminary stage. Aggrieved over the said order, the present revision is preferred by the revision petitioner.

3. Mr.S.Saravana kumar, learned counsel for the petitioner contended that the said vehicle was seized by the Assistant Geologist, Geology and Mining Department, Villupuram on 19.06.2023 and that it is kept in the custody of Police in open space in the Police Station. His contention is that if the vehicle is kept in an open space, the value of the same will diminish over the period of time. Therefore he prayed for return of the vehicle.

4. Mr.R.Vinothraja, learned Government Advocate (Crl. side) appearing for the respondent contended that the vehicle was used for



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illegal transportation of 2 1/2 unit of Pebbles sand and if the vehicle is ordered to be returned, he may use the vehicle for committing similar offence. He further contended that confiscation proceedings have not been initiated that there are no bad antecedents and that no case is pending against the present petitioner. However, he sought for dismissal of the petition.

5. The present case is filed under Section 379 IPC and from the records it is seen that the respondent Police has not initiated confiscation proceedings in this regard.

6. In this circumstance, 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.

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



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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.”

7. Keeping the vehicle idle in an open space, would diminish the value of the vehicle over a period of time. As such, considering the ratio laid down by the Hon'ble Supreme Court, this Court is inclined to allow the Revision Petition.



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8. Accordingly, this Criminal Revision Petition is allowed, the impugned order in C.M.P.No.3422 of 2023 dated 07.07.2023 passed by the learned Judicial Magistrate I, Ulundurpet, is set aside and the vehicle may be returned to the petitioner 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. TN 46 L 5601 and such panchanama can be used in evidence.
- iv. the petitioner shall take photograph of the vehicle bearing Registration No. TN 46 L 5601 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;



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- 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.

08.08.2023

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

To

- 1.The Judicial Magistrate I, Ulundurpet
- 2.The Inspector of Police,
Ulundurpet Police Station,
Kallakurichi District.
3. The Section Officer,
Criminal Section, High Court,
Madras.

R. HEMALATHA, J.



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