



Crl.R.C.No.1428 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

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

Crl.R.C.No.1428 of 2023

Pandidurai

... Petitioner

Vs.

State Rep. by
The Sub Inspector of Police,
Taluk Police Station,
Villupuram,
Villupuram District.
(Crime No.268 of 2023)

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code to call for the records and set aside the orders dated 08.06.2023 passed by the learned Judicial Magistrate No.1, Villupuram in C.M.P.No.4322/2023 and return the vehicle Ashok Leyland Lorry bearing Reg.No.TN-52-8395 in Crime No.268/2023 to the petitioner.

For Petitioner : Mr.P.Balamurugan

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



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ORDER

Challenging the orders dated 08.06.2023 passed by the learned Judicial Magistrate No.1, Villupuram in C.M.P.No.4322/2023, the present revision is filed, seeking return of Ashok Leyland Lorry bearing Reg.No.TN-52-8395 seized in connection with Crime No.268/2023 of Taluk Police Station, Villupuram.

2. The case of the prosecution is that when the Sub Inspector of Police, Taluk Police Station, Villupuram, along with his police team were on routine vehicle check up at about 11 a.m. on 22.04.2023, near Ellis Sathiram bypass, they intercepted a vehicle, namely, Ashok Leyland Lorry bearing Reg.No.TN-52-8395. On seeing the police, the driver of the lorry stopped the vehicle and fled away from the spot. The police found the lorry loaded with 3 units of pebble stones and registered an FIR in Crime No.268/2023 for the offence punishable under [Sections 379](#) IPC and [Section 21\(1\)](#) of Mines and Minerals (Development &



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3. The petitioner alleging that he is the owner of the vehicle filed a petition under Sections 451 & 457 Cr.P.C. in C.M.P.No.4322/2023 before the Judicial Magistrate No.1, Villupuram, praying for interim custody of the vehicle. The learned Judicial Magistrate No.1, Villupuram, vide her orders dated 08.06.2023, partly allowed the said petition in respect of Section 457 Cr.P.C. alone and dismissed the petition filed under Section 451 Cr.P.C. The orders passed by the learned Judicial Magistrate No.1, Villupuram, is extracted hereunder.

"The 457 application was filed to direct the respondent to submit the above said vehicle before the court as case property. According to the petitioner his vehicle Ashok Leyland TN-52-8395 was seized by the respondent. The property value will be diminished destroyed if exposed to sun & rain. Considering the circumstances stated in the



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affidavit and considering other facts and circumstances of this case,, this court is inclined to allow the application.

Since this is no bar to produce the property before the court for necessaring as a court property this court is directing the concern police to produce the property and direct the concern court to numbering the same as a court property.

In respect of interim custody this case property is under the offence of 379, 21(1) MM D&R Act 1957 and in respect of the above offence the Hon'ble Appellate courts has issued so many direction stating that the lower court is not having jurisdiction to decide this application. Considering the supra reasons this court is not inclined to allow this petition.

Hence, the application is partly allowed in respect of 457 alone."



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4. Challenging the abovesaid order, the petitioner filed the present Criminal Revision.

5. Sections 451 and 457 Cr.P.C read thus:

Section 451 in The Code Of Criminal Procedure, 1973

451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Explanation.- For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used



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Section 457 in The Code Of Criminal Procedure, 1973

457. Procedure by police upon seizure of property.

(1)Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2)If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.



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As per Section 457 of the Code of Criminal Procedure, if a Magistrate is brought to the notice of a seizure of the property, he can order disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. In the instant case, the petitioner says that he is the owner of the property and this was not at all refuted by the Sub Inspector of Police, Taluk Police Station.

6. Mr.P.Balamurugan, learned counsel for the revision petitioner contended that if the vehicle is kept in an open space, the value of the same will diminish over a period of time. He further contended that the petitioner is ready to abide by any condition that may be imposed by this Court and prayed for allowing the revision petition.

7. Learned Government Advocate (Criminal Side) for the respondent did not raise any serious objection to return the vehicle to the present petitioner.



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8. It is relevant to refer to a decision of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai and others Vs. State of Gujarat*** reported in ***(2002) 10 SCC 283*** in which it was 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 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



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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.Considering the ratio laid down by the Hon'ble Supreme Court, this Court is inclined to allow the present revision. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 08.06.2023 passed by the learned Judicial Magistrate No.1, Villupuram, is set aside. The learned Judicial Magistrate No.1, Villupuram is directed to return the vehicle on the following conditions :

- i) the petitioner shall prove the ownership of his vehicle by producing R.C.Book and other relevant records;
- ii) the R.C.Book shall be deposited in the Court and the Court shall issue a certificate in this regard.
- iii) the petitioner shall execute a bond for a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) before the Judicial Magistrate No.1, Villupuram.
- iv) the Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing Reg.No.TN-52-8395 and such



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- v) the Court shall take photograph of the vehicle bearing Reg.No.TN-52-8395 and certify the same under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.
- vi) the petitioner shall not alienate or encumber the vehicle in any manner whatsoever;
- vii) the petitioner shall give an undertaking that he would not use the vehicle for any illegal activities in future,
- viii) the petitioner shall also produce the vehicle as and when required by the court below and by the respondent police.

16.08.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl/bga



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R. HEMALATHA, J.

mtl/bga

To

1.The Judicial Magistrate No.1, Villupuram.

2.The Sub Inspector of Police,
Taluk Police Station,
Villupuram,Villupuram District.

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