



Crl.R.C.No.1489 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM

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

Crl.R.C.No.1489 of 2023

C. Dhanabal

... Petitioner

Vs.

The State by Inspector of Police
Sankari Police Station
Salem District
Crime No.311 of 2022

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the orders dated 19.07.2023 in C.M.P.No.160 of 2023 on the file of the learned Judicial Magistrate No.I, Sankari.

For Petitioner : Mr.A.Saravanan

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



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ORDER

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Challenging the orders dated 19.07.2023 in C.M.P.No.160 of 2023 on the file of the learned Judicial Magistrate No.I, Sankari., the present Criminal Revision is filed.

2. The revision petitioner is the owner of the vehicle, viz.,Ashok Leyland Tipper Lorry bearing Registration No.TN-30-U-5871, which was seized by the respondent police in connection with Crime No.311/2022 of Sankari Police station, Salem District, for the offence punishable under Sections 379 IPC and 21 (1) Mines and Minerals (Development & Regulations) Act, 1957. The present petitioner filed a petition in C.M.P.No.160 of 2023 under Section 451 Cr.P.C., before the Judicial Magistrate No.I, Sankari, seeking interim custody of the said vehicle and the petition was dismissed by the learned Judicial Magistrate No.I, Sankari, on 19.07.2023 on the ground that the vehicle was involved in illegal transportation of 3 units of gravel. Aggrieved over the said orders, the present criminal revision case is filed.



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3. Mr.A.Saravanan learned counsel for the petitioner would contend that the present petitioner is innocent and he is neither involved in the alleged crime nor present in the scene of occurrence. His further contention is that if the seized vehicle is kept in an open space the value of the vehicle would diminish over a period of time.

4. Mr.R.Vinothraja, learned Government Advocate (Crl. side) appearing for the respondent contended that the vehicle was used for illegal transportation of gravel and if the vehicle is ordered to be returned, the petitioner may use the vehicle for committing similar offence. He therefore, sought for dismissal of the petition.

5. In this back drop, it is relevant to refer 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 is held thus:



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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.”



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6. It is true that keeping the vehicle idle in an open space, would definitely impair 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 grant interim custody of the vehicle to the petitioner.

7. Accordingly, the Criminal Revision Case is allowed and the impugned order dated 19.07.2023 passed by the learned Judicial Magistrate No.I, Sankari, in C.M.P.No.160 of 2023 is set aside and the interim custody of the vehicle is given to the petitioner 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 certificate in this regard.
- iii. The petitioner shall execute a bond for a sum of Rs.2,00,000/- (Rupees two lakhs Only) before the trial Court.
- iv. The Court may prepare a panchanama in Judicial Form



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No.82 with regard to the vehicle bearing Registration No. TN-30-U-5871 and such panchanama can be used in evidence.

- v. The Court shall take photograph of the vehicle bearing Registration No.TN-30-U-5871 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; and
- viii. The petitioner shall also produce the vehicle as and when required by the court below and by the respondent police.

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



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To

1. The Judicial Magistrate No.I, Sankari
2. The State by Inspector of Police
Sankari Police Station
Salem District
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R. HEMALATHA, J.

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