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Crl.R.C.No.1589 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

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

Crl.R.C.No.1589 of 2023

S.Prakash

... Petitioner

Vs.

The State rep. by,
Inspector of Police,
Thirunavalur Police Station,
Kallakurichi District.
(Crime No.446/2022)

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.II, Ulundurpet in C.M.P.No.5355 of 2023, dated 31.08.2023.

For Petitioner : Mr.T.Balaji for

Mr.R.Ramamoorthy

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl. side)

ORDER

Challenging the orders, dated 31.08.2023 passed in C.M.P.No.5355 of 2023, by the learned Judicial Magistrate No.II, Ulundurpet, the present Criminal Revision is filed by the petitioner.



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2. The revision petitioner filed a petition in C.M.P.No.5355 of 2023 under Section 451 Cr.P.C., before the Judicial Magistrate No.II, Ulundurpet, seeking interim custody of the vehicle viz., Lorry bearing registration No.TN-69-AA-3026, which was seized in connection with Crime No.446/2023 by the respondent police and subsequently produced before the Judicial Magistrate No.II, Ulundurpet in C.P.No.141/2023. The said petition was dismissed by the learned Judicial Magistrate No.II, Ulundurpet on 31.08.2023 on the ground that the vehicle was involved in illegal transportation of pebbles, aggrieved over which, the present revision is filed.

3. Mr.T.Balaji, learned counsel for the petitioner would contend that the accused is an innocent person and 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



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illegal transportation of four units of pebbles and the petitioner is A1 in the present case. However, he did not raise any serious objection in allowing this 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:

“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



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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. 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, this Criminal Revision is allowed and the impugned order in C.M.P.No.5355 of 2023 dated 31.08.2023 passed by the learned Judicial Magistrate No.II, Ulundurpet, is set aside and the interim custody of the vehicle is given to the petitioner on the following conditions :

- i. The petitioner shall prove his ownership of the vehicle by producing R.C.Book and other relevant records;



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- 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.2,00,000/- (Rupees Two lakhs Only) before the trial Court;
- iv. The Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing Registration No. TN-69-AA-3026 and such panchanama can be used in evidence;
- v. The Court shall take photograph of the vehicle bearing Registration No. TN-69-AA-3026 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
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R. HEMALATHA, J.

vum

To

- 1.The Judicial Magistrate No.II,
Ulundurpet.
- 2.The Inspector of Police,
Thirunavalur Police Station,
Kallakurichi District.

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