



WEB COPY



Crl.R.C.No.125 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.R.C.No.125 of 2023

Dhananjayan
Petitioner

...

Vs.

The State rep. by
The Inspector of Police,
Poraiyar Police Station,
Nagapattinam District.
(Crime No.792/2020)
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records in Crl.M.P.No.1039 of 2021 on the file of the District and Sessions Judge, Nagapattinam and set aside the same, subsequently, grant interim custody of vehicle Tipper lorry bearing registration No.TN-51 J-1136.

For Petitioner : Mr.N.Chinnaraj



Crl.R.C.No.125 of 2023

For Respondent : Mr.V.Meganathan,
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 05.04.2021 passed in Crl.MP No.1039 of 2021 by the District and Sessions Judge, Nagapattinam and grant interim custody of vehicle Tipper lorry bearing registration No.TN-51 J-1136.

2. The case of the prosecution is that on 24.09.2020 the respondent police, on receipt of information found that the petitioner was involved illegal transportation of 2 units of savudu sand in his Tipper Lorry. Hence, the respondent police registered a case in Crime No.792 of 2020 against the petitioner for the offence under Sections 379 IPC r/w Section 21(1) of Mines & Minerals (Development & Regulation) Act 1957 and seized the Tipper Lorry bearing registration No.TN-51 J-1136 along with 2 units of savudu sand. During the pendency of the investigation, the petitioner filed an application before the District and Sessions Judge, Nagapattinam, in CMP No. 1039 of 2021 under Sections 451 & 457 of Cr.P.C. for return of



Crl.R.C.No.125 of 2023

WEB COPY

vehicle and the learned Magistrate by order dated 05.04.2021 dismissed the same. Challenging the said order, the petitioner has filed the present revision before this Court.

3. The learned counsel for the petitioner submitted that the petitioner is the owner of the Tipper Lorry bearing registration No.TN-51 J-1136. He further submitted that he has not committed any offence as alleged by the respondent police and his vehicle was not involved in any other case, similar in nature.

4. The learned counsel further submitted that, no purpose will be served in keeping the vehicle under the custody of respondent police and if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle. He further submitted that the petitioner is ready to abide by any condition imposed by this court for return of vehicle and also he will produce the vehicle, as and when required either before the respondent police or before the Trial Court. Hence, he prayed to return the vehicle to



Crl.R.C.No.125 of 2023

the petitioner.

5. The learned Government Advocate (Crl.Side) submitted that, the petitioner is the owner of the Tipper Lorry bearing registration No.TN-51 J-1136 and it was seized along with 2 units of savudu sand. He further submitted that the Tipper Lorry was used to transport sand illegally and if the vehicle is returned to the petitioner, there are every chances to use it for committing similar type of offence. Hence, he objected to return the vehicle to the custody of the petitioner.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and I have perused the materials on record.

7. On a perusal of the records, it reveals that the petitioner is not an accused in this case and he is the owner of the Tipper lorry bearing Registration No. TN-51 J-1136 and it was seized by the respondent police with two units of sand. The Trial Court dismissed the petition in



Crl.M.P.No.1039 of 2021, filed by the petitioner, on the ground that the petition, relating to return of vehicle involved in Mines and Minerals theft, is not maintainable before the Magistrate. It is the contention of the learned counsel for the petitioner that the petitioner is ready to give guarantee and security for returning the vehicle and if the vehicle is being kept idle in open space, it would cause damage to the vehicle.

8. At this juncture, it is relevant to rely upon 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*** and the relevant portion is extracted hereunder.

Vehicles

17. 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.

18. In case where the vehicle is not claimed by the accused,



Crl.R.C.No.125 of 2023

*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.***

Therefore, as per the ratio laid down by the Hon'ble Apex Court, this Court is of the view that, keeping the vehicle idle in the open space, will diminish its nature and lost its value and no purpose will be served. As such, considering the nature of offence and also taking into account the fact that the vehicle is not involved in any other case similar in nature, this Court is inclined to allow the Criminal Revision Case.

9. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The respondent police is directed to return the vehicle to the owner of the vehicle on the following



conditions:

(i)The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove his ownership and the respondent police, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle;

(ii)The petitioner shall not alter or alienate the vehicle in any manner till confiscation proceedings is over;

(iii) The petitioner ***shall execute a bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the satisfaction of the learned District and Sessions Judge, Nagapattinam.***

(iv)The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent or the Court below as well as by the District Collector of the District or authorized officer in that behalf by the Government;



Crl.R.C.No.125 of 2023

(v)The petitioner shall participate in the confiscation proceedings, if any initiated, and shall produce the vehicle, before the confiscation authority. This order is subjected to the confiscation proceedings.

25.01.2023

Index: Yes/No
Internet: Yes/No
rpl

To

1. The District and Sessions Judge, Nagapattinam.
2. The Inspector of Police,
Poraiyar Police Station,
Nagapattinam District.
3. The Public Prosecutor, Madras High Court, Chennai.



WEB COPY



Crl.R.C.No.125 of 2023

V.SIVAGNANAM, J.,

rpl

Crl.RC No.125 of 2023

25.01.2023