



Crl.R.C.(MD).No.439 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

Crl.R.C(MD).Nos.439 to 442 of 2023

Arunachalam ... Petitioner in Crl.O.P(MD).No.439 of 2023

Kannan ... Petitioner in Crl.O.P(MD).No.440 of 2023

Ashok Kumar ... Petitioner in Crl.O.P(MD).No.441 of 2023

Kaniraj ... Petitioner in Crl.O.P(MD).No.442 of 2023

Vs.

State rep. through
the Forest Range officer,
Sivagiri Forest Division,
Tenkasi District.
(WLOR Nos.02 of 2023)

... Respondent in all cases

PRAYER in Crl.R.C(MD).No.439 of 2023: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records from the lower Court and set aside the order passed in Crl.M.P.No.1398 of 2023, dated 15.03.2023 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri, Tenkasi District by returning the property OPPO A16K Model CPH 2349 Transparent pouch with Saibaba Photo Mobile phone to the revision petitioner.



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PRAYER in Crl.R.C(MD).No.440 of 2023: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records from the lower Court and set aside the order passed in Crl.M.P.No.1397 of 2023, dated 15.03.2023 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri, Tenkasi District by returning the properties namely Passion pro two wheeler bearing Regn.No.TN 76 AD 9715 and Honda Two Wheeler bearing Registration No. TN 67 AP 7570 to the petitioner.

PRAYER in Crl.R.C(MD).No.441 of 2023: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records from the lower Court and set aside the order passed in Crl.M.P.No.1396 of 2023, dated 15.03.2023 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri, Tenkasi District by returning the property OPPO F21 Pro Model CPH 2363 Rainbow Colour back pouch mobile phone to the revision petitioner.

PRAYER in Crl.R.C(MD).No.442 of 2023: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records from the lower Court and set aside the order passed in Crl.M.P.No.1400 of 2023,



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dated 15.03.2023 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri, Tenkasi District by returning the property OPPO A16 Model CPH 2269 blue colour back side transparent pouch mobile phone to the revision petitioner.

For Petitioner
in all cases : Mr.K. Jeyamohan

For respondent : Mr. R. Meenakshi Sundaram
in all cases Additional Public Prosecutor

COMMON ORDER

Crl.R.C(MD).No.439 of 2023 filed by the petitioner / A9 in WLR.No.2 of 2023 on the file of the respondent police to set aside the order passed in Crl.M.P.No.1398 of 2023, dated 15.03.2023 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri, Tenkasi District and seek interim custody of the property OPPO A16K Model CPH 2349 Transparent pouch with Saibaba Photo Mobile phone.

2.Crl.R.C(MD).No.440 of 2023 filed by the owner of the property seeking interim custody of the properties namely, a Passion pro two wheeler bearing Regn.No.TN 76 AD 9715 and Honda Two Wheeler bearing Registration No. TN 67 AP 7570 by setting aside the impugned



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order, dated 15.03.2023 passed in Crl.M.P.No.1397 of 2023, on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri, Tenkasi District.

3.Crl.R.C(MD).No.441 of 2023 filed by petitioner / A7 to set aside the order passed in Crl.M.P.No.1396 of 2023, dated 15.03.2023 on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri, Tenkasi District and seek the interim custody of the property OPPO F21 Pro Model CPH 2363 Rainbow Colour back pouch mobile phone to the revision petitioner.

4.Crl.R.C(MD).No.442 of 2023 filed by petitioner / A10 owner of property to set aside order, dated 15.03.023 passed in Crl.M.P.No.1400 of 2023, on the file of the Additional District Munsif Cum Judicial Magistrate, Sivagiri, Tenkasi District and seek the interim custody of the property OPPO A16 Model CPH 2269 blue colour back side transparent pouch mobile phone to the revision petitioner.

5.All the properties are seized by the respondent police in the FIR in WLOR.No.02 of 2023, for the offence under Sections 2(1),



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2(12A), 2(14), 2(16), 2(24A), 2(26), 2(36), 2(37), 9, 27(4), 31, 39(1), (b), 39(1)(D), 50, 51(1) (Amendment in 2022) 51(A), 52, 57 of Wild Life Protection Act and Section 2, 21(D), 21(b) of Tamil Nadu Forest Act from the petitioners herein.

6. Thereafter, the accused filed the petitions before the trial Court under Section 451 Cr.P.C., to seek interim custody of the properties. The learned Trial Judge following the Judgment of the Hon'ble Supreme Court reported in **2020 (12) SCC 733** in the case of **State of Madhya Pradesh Vs. Uday Singh**, dismissed the petition stating that subsequently confiscation proceeding is initiated and hence, the return of properties under Section 451 Cr.P.C., is not entertained.

7. The learned counsel appearing for the petitioners submitted that in the said case the Hon'ble Supreme Court dealt with the Forest Act. Even in the said Judgment, the Hon'ble Supreme Court relied the Judgment of the Hon'ble Supreme Court in the Judgment reported in **2008 (14) SCC 624 in the case of State of Madhya Pradesh and others Vs. Madhukar Rao**.



8.In the said judgment **2008 (14) SCC 624 in the case of *State of Madhya Pradesh and others Vs. Madhukar Rao***, similar provision of the Wild Life Protection Act is considered and held as follows:

“22. We have, therefore, no doubt that the provisions of Section 50 of the Act and the amendments made thereunder do not in any way affect the Magistrate's power to make an order of interim release on the vehicle under Section 451 of the Code.

23. Learned counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1)(c) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act, it was held that the provision of Section 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations / allegations levelled by the departmental authorities would bring it into conflict with the



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constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section 39(a)(d) cannot be used against exercise of the magisterial power to release the vehicle during pendency of the trial.”

9.In view of the above ratio laid down by the Hon'ble Supreme court, this Court directed the Additional Public Prosecutor to verify the same. The learned Additional Public Prosecutor after verifying the same, submitted that said law laid down by the Hon'ble Supreme Court is final and the same is still hold good.

10.This Court considered the submission of the learned counsel appearing on either side and the precedents relied upon them.

11.This Court considered the Judgment of the Hon'ble Supreme Court reported in the case of ***State of Madhya Pradesh and others Vs. Madhukar Rao (2008 (14) Scc 624)*** held that the said principle is applicable to the said case in favour of the petitioner. In this case also the vehicle was seized under the Wild Life Act and not under



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the Forest Act. Further, the learned Additional Public Prosecutor has ascertained that the judgment (2008 (14) Scc 624) is hold good.

12.Apart from that the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat, 2002 10 SCC 283** issued detailed guidelines to grant the interim custody.

13.Considering the above law laid down by (2008 (14) Scc 624) and **Sunderbhai Ambalal Desai v. State of Gujarat**, this Court inclined to allow the Revision. The reliance placed by the learned Trial Judge in State of **Madhya Pradesh Vs. Uday Singh** reported in **2020 12 SCC 733** is not applicable to the present case and the same was related to the Forest Act where there is a specific provision to exempt the applicability of the 451 Cr.P.C. Hence, this Court set aside the impugned orders passed by the learned trial Judge in Crl.MP.No.1398, 1397, 1396 and 1400 of 2023 dated 15.03.2023.

14.Accordingly, these Revisions are allowed in the following terms:-

i) The petitioners are directed to execute the sureties for the value of the each



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properties.

ii) The petitioners shall not alienate the property till the disposal of the revision cases.

iii) The petitioners are directed to file an affidavit to surrender the property before the trial Court in the event of the case is ended in conviction.

(iv) The petitioners should surrender their original RC Book before this Court.

(v) The petitioners are directed to take four side photographs of their vehicles and shall produce it before the Court.

11.07.2023

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
trp/dss



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K.K. RAMAKRISHNAN. J.,

trp/dss

To

1. The the Additional District Munsif Cum Judicial Magistrate,
Sivagiri, Tenkasi.
2. The Forest Range officer,
Sivagiri Forest Division,
Tenkasi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.R.C(MD).Nos.439 to 442 of 2023

Dated : 11.07.2023