



Crl.R.C.(MD).No.615 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

Crl.R.C(MD).No.615 of 2023

Xavier @ Maria Thomas

... Petitioner

Vs.

State rep. through
The Inspector of Police,
CSCID Police Station,
Thoothukudi District.
(Crime No.147 of 2022)

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to call for the records relating to the order, dated 07.02.2023 passed in Crl.M.P.No.1372 of 2023 on the file of the Judicial Magistrate No.IV, Thoothukudi.

For Petitioner : Mr. J. David Ganesan

For respondent : Mr. Kottaichamy

Government Advocate (Crl. Side)

ORDER

This Criminal Revision has been filed to call for the records relating to the order, dated 07.02.2023 passed in Crl.M.P.No.1372 of



Crl.R.C.(MD).No.615 of 2023

2023 on the file of the Judicial Magistrate No.IV, Thoothukudi.

WEB COPY

2. A case was registered by the respondent police in Crime No.147 of 2022 with the allegation that the petitioner and other accused persons illegally transported Diesel by using Tanker Lorry bearing Regn.No.TN 24 AS 3116 and the another vehicle bearing Regn.No.TN 69 T 1166 and hence, a case was registered for the offence under Sections 2 (e)(v), 2 (e)(vi), 2(e)(vii) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998 and u/s. 7(1)(a)(ii) of Essential Commodities Act, 1955. Thereafter, the respondent police seized the diesel along with the vehicles.

3. The petitioner has filed petition under Section 451 Cr.P.C., in Crl.M.P.No. 1372 of 2023 before the Trial Court to seek the custody of 2500 Liters of diesel and the same was dismissed by the learned Trial Judge by the impugned order, dated 07.02.2023.

4. The learned counsel appearing for the petitioner submitted that the vehicle involved in this case has already been released by this Court, by order dated 06.02.2023 in Crl.R.C(MD).No.111 of



Crl.R.C.(MD).No.615 of 2023

WEB COPY

5. According to the learned Government Advocate (Crl. Side) so far the vehicle was not released.

6. This Court considered the rival submissions made on the both sides and perused the documents.

7. The Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***2002 (10) SCC 283*** issued the following guidelines to grant interim custody of crime articles in paragraph Nos.12 and 13:

“12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

- (1) preparing detailed proper panchnama of such articles;*
- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and*
- (3) after taking proper security”*

13. For articles such as seized liquor also, prompt action should be taken in



Crl.R.C.(MD).No.615 of 2023

disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.”

8. The diesel is inflammable one and hence, keeping the diesel inside the tanker lorry without using the same would cause loss to the lorry as well as the density of the diesel due to the evaporation. Further, keeping the diesel, the Investigating Agency has not conduct any investigation. As submitted by the learned counsel for the petitioner sample was also taken and the report also furnished by the expert. So there is no necessity to keep the diesel in the custody of the Investigating Agency. Further, the Hon'ble Supreme Court clearly gave a direction to grant the interim custody of the inflammable articles. Hence, this Court is inclined to allow this revision and accordingly allowed with the following conditions:

(i) The Investigating officer is directed to take photo of the Lorry with diesel and produce before the trial Court along with proper “CD” and proper certificate required under Section 65B of the Indian



Crl.R.C.(MD).No.615 of 2023

Evidence Act.

WEB COPY

(ii) The petitioner is directed to submit a security bond for the value of diesel before the learned Judicial Magistrate IV, Thoothukudi.

(iii) The petitioner is directed to file an affidavit before the Trial Court to the effect that he shall deposit the value of diesel on the date of seizure of the diesel in the event of conviction.

(ii) The learned Trial Judge is directed to release the diesel thereafter.

10.07.2023

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

To

1. The learned Judicial Magistrate IV, Thoothukudi.
2. The Inspector of Police,
CSCID Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,



Crl.R.C.(MD).No.615 of 2023

Madurai Bench of Madras High Court,
Madurai.

WEB COPY

K.K. RAMAKRISHNAN. J.,

trp

Order made in
Crl.R.C(MD).No.615 of 2023

Dated : 10.07.2023