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Crl.R.C.No.49 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.R.C.No.49 of 2024

J.Mani

... Petitioner

Vs.

The State Rep by:-

The Sub-Inspector of Police,

Ponnai Police Station,

Ranipet District.

(Crime No.53 of 2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the impugned order in Crl.M.P.No.4004 of 2023 dated 19.12.2023 passed by the learned Judicial Magistrate, Sholinghur, Ranipet District, consequently direct the respondent to return the petitioner's vehicle, viz., the tractor and trailer bearing registration number TN 23 AX 2589 and TN 23 AX 2590 to the petitioner as interim custody.

For Petitioner : Mr.G.Balamanikandan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



Crl.R.C.No.49 of 2024

ORDER

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The petitioner, who is the owner of the vehicle viz., the Tractor and Trailer bearing registration Nos.TN-23-AX-2589 and TN-23-AX-2590, filed a petition seeking return of property before the learned Judicial Magistrate, Sholinghur in C.M.P.No.4004 of 2023. The lower Court, by order dated 19.12.2023, dismissed the same. Against which, the present revision petition is filed.

2.The contention of the learned counsel for petitioner is that the petitioner's vehicle was seized by the respondent police in Crime No.53 of 2023 for offences under Sections 379 and 430 of IPC r/w Section 21(1) of the Mines and Minerals (Development & Regulation) Act, 1957. The case projected for seizure of the Tractor and Trailer is that the petitioner's son Udhayakumar and one Sathish of Ponnai were found in illegal transportation of one unit of river sand on 03.08.2023. The respondent police, who were on patrol duty found the Tractor, enquired the driver and occupant and found no



Crl.R.C.No.49 of 2024

WEB COPY

valid permit. Since it was without permit, the vehicle was seized and the accused were arrested.

3.The learned counsel for petitioner submitted that the petitioner is the owner of the Tractor and Trailer. He uses the vehicle for the agricultural purpose. The petitioner has not given any instruction to use the vehicle to mine or transport any river sand. He further submitted that the vehicle is kept in open space exposing to vagaries of weather, further detention would make the vehicle unusable, rusted and it would become a scrap. The petitioner is ready to comply with any condition that this Court may impose while granting return of vehicle. Hence, he prays for return of vehicle Tractor and Trailer.

4.The Additional Public Prosecutor appearing for the respondent Police filed his counter and submitted that the case of the prosecution is that, on 03.08.2023, at about 4.30 hours, the Inspector of Police along with his



Crl.R.C.No.49 of 2024

WEB COPY

team were involved in the inspection of illegal sand theft at Ponnai-Avalrangapalli Road, Palayankuppam, Ponnai River. At that time the accused person A1/ Udhayakumar and A2/ Sathish were proceedings with the vehicle i.e., tractor and trailer bearing the registration No.TN 23 AX 2589 & TN23 AX 2590 in illegal possession of sand from the riverbed. Thereafter the respondent Police enquired and arrested them and seized the illegal sand and the vehicles under the seizer Mahazar. Hence the Complaint.

4.1.It is submitted that based on the above complaint, a case was registered in Ponnai Police Station in Crime No.53 of 2013 under Sections 379, 430 of IPC r/w 21(1) of the Mines and Minerals (Development & Regulation) Act, 1957 on 03.08.2023 at about 06.30 hours against the accused persons. At this stage, the petitioner, who is father of A1/Udhayakumar filed a petition u/s.457 Cr.P.C seeking interim custody of vehicle bearing registration Nos.TN-23-AX-2589 & TN-23-AX-2590 in Crl.M.P.No.4004 of 2023 and the same was dismissed on 19.12.2023.



Crl.R.C.No.49 of 2024

WEB COPY

4.2.Further, the learned Additional Public Prosecutor made his objections based on the orders passed by this Court in Rev.Appl.Writ(MD).Nos.80 to 82 of 2019, W.P(MD).No.19936 of 2017, W.P(MD).Nos.7595 and 21485 of 2018, W.P(MD).No.14341 of 2022 and Crl.RC.(MD).No.470 of 2023. Hence, he prayed for dismissal of the revision petition.

5.This Court in ***Crl.O.P.No.646 of 2024 batch dated 29.01.2024 [Annadurai vs. The Inspector of Police, Kurisilapet Police Station, Thirupathur District]***, considered the objections and referring to the orders of the Single Judge, Division Bench and Full Bench of this Court and the decisions of the Apex Court, yielding to the command of the Hon'ble Supreme Court under Article 141 of the Constitution of India, has held as follows:

“30.In view of the aforesaid discussion, the legal position can be summarised as under:



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(a)The power to initiate confiscation proceedings and issue directions for release/disposal of the property under Section 21(4-A) of the MMDR Act, 1957 lies with the Court and not with any other authority;

(b)Section 21(4-A) expressly states that the Court competent to initiate confiscation proceedings and issue directions for the disposal of the seized material is the court competent to take cognizance of the offence under Section 21(1) of the Act;

*(c)The Special Court constituted under Section 30-B of the MMDR Act,1957 is invested with the powers of a Court of Session under Section 30-C. Consequently, the Special Court being a Court of Session cannot directly take cognizance of an offence under the Act in view of the bar contained in Section 193 Cr.P.C and in the light of the law laid down in paragraph 38 of the decision in **Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62;***

(d)As a consequence, a complaint under Section 21 of the MMDR Act, 1957 can be filed only before the jurisdictional



CrI.R.C.No.49 of 2024

Magistrate empowered to take cognizance of the offence (State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, Kanwar Pal Singh v. State of U.P., (2020) 14 SCC 331 and Jayant v. State of M.P., (2021) 2 SCC 670), and not before the Special Court;

(e)Ex-consequenti, the Court for the purposes of Section 21(4-A) is the Court of the Magistrate since it is that Court which is empowered to take cognizance of the offences under Section 21(1). Hence, an application for release of vehicle will lie only before the jurisdictional Magistrate;

*(f)The decisions of this Court in **Muthu v District Collector** (2018 SCC Online Mad 13985), the order passed in review dated 09.09.2019, the decision of the Full Bench in **S. Kumar v District Collector** (2023) 3 MLJ (Cri) 536 and that of the learned single judge **Ramar v The State** (Cr R.C MD 470 of 2023) dated 11.10.2023, to the extent that it is inconsistent with the decisions of the Supreme Court in **State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, Kanwar Pal Singh v. State of U.P., (2020) 14 SCC 331 and Jayant v. State of M.P., (2021) 2 SCC 670** and paragraph*



CrI.R.C.No.49 of 2024

38 of the decision in Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62, as discussed above, do not lay down the correct law.”

6. In view of the above, this Court finds that the vehicle is kept in open space exposing to vagaries of weather get rusted and the value of the vehicle get diminished. Hence, this Court is inclined to return the vehicle to the petitioner. The respondent police is directed to return the vehicle, viz., Tractor and Trailer bearing registration Nos. TN-23-AX-2589 and TN-23-AX-2590 to the petitioner on the following conditions:

(i) The petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) for Tractor bearing Reg.No. TN-23-AX-2589 and Rs.50,000/- (Rupees Fifty Thousand only) for Trailer bearing Reg.No. TN-23-AX-2590 in total Rs.1 lakh before the jurisdictional Tahsildar as non-refundable deposit. After receipt of the above said amount, the same will have to be deposited by the Tahsildar,



Crl.R.C.No.49 of 2024

to the credit of the District Mines and Minerals Foundation Trust, Ranipet as non- refundable deposit;

(ii) The petitioner shall execute a personal bond for a sum of Rs.10,000/- [Rupees Ten Thousand only] with two sureties each, for a like sum to the satisfaction of the learned Judicial Magistrate, Sholinghur, Ranipet District. The petitioner and the sureties shall affix their photographs and give the copies of their Aadhaar Card;

(iii) The petitioner shall give an undertaking before the respondent/ authority concerned stating that he will not use the vehicle in question for any illegal activities in future and shall produce the same as and when required by the respondent and also the trial Court, failing which the respondent/trial Court is at liberty to confiscate the vehicle;

(iv) The petitioner shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned;

(v) The petitioner shall take photograph of the vehicle and submit the same along with Compact Disc duly



WEB COPY



Crl.R.C.No.49 of 2024

certified under Section 65-B of the Indian Evidence Act,
1872;

(vi) The petitioner is also directed to participate in
the enquiry to be conducted by the respondent.

7. Accordingly, the Criminal Revision Case stands allowed and the
impugned order dated 19.12.2023 passed by the learned Judicial Magistrate,
Sholinghur in Crl.M.P.No.4004 of 2023 is set aside.

28.03.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Crl.R.C.No.49 of 2024

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To

- 1.The Sub-Inspector of Police,
Ponnai Police Station,
Ranipet District.
- 2.The Judicial Magistrate,
Sholinghur.
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.49 of 2024

M.NIRMAL KUMAR, J.

rsi

Crl.R.C.No.49 of 2024

28.03.2024