



Crl.R.C.No.67 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.67 of 2024

P.Jothiprakash

... Petitioner

Vs.

State Rep by
Inspector of Police,
Periyathachur Police Station,
Villupuram District.
Crime No.93 of 2023

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.7019 of 2023 on the file of the Judicial Magistrate II, Tindivanam in Crime No.93 of 2023 on the file of the respondent dated 07.12.2023 and direct the respondent to release the MAHINDRA ARJUN NOVO 605 TRACTOR bearing No.TN-16-E-7371 and allow this Criminal Revision Petition.

For Petitioner : Mr.G.Tamil Selvan

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



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ORDER

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The petitioner had filed a return of property petition seeking interim custody of MAHINDRA ARJUN NOVO 605 TRACTOR bearing No.TN-16-E-7371. The lower Court by order dated 07.12.2023 in CrI.M.P.No.7019 of 2023 dismissed the petition. Against which the present revision is filed.

2. The contention of the petitioner is that the tractor is in the name of his father Paramasivam. His father passed away on 11.01.2020. Thereafter, the petitioner is using the tractor during his father life time and thereafter for agriculture purpose. This being so, the petitioner is said to have transported river sand and he was arrested along with tractor. The contention of the petitioner is that the petitioner has not taken any river sand. It was only the sand available in the nearby field which was collected for the purpose of leveling his agriculture lands, which is a usual practice done in the village. The respondent police on the other hand projected as though, petitioner has smuggled river sand without permit. Further the petitioner produced the death certificate of his father and the legal heir certificate to show that he is the first legal heir of his



father and also an affidavit having no objection from other legal heirs namely his brothers and sisters.

3. The learned Additional Public Prosecutor filed his counter and submitted that on 08.04.2023, when Tr.K.Mahalingam, the then Sub Inspector of Police was in station duty, at that time he was received about illegal theft of sand. Based on that, the then Sub Inspector of Police along with his team went to the scene of occurrence(i.e) Sankaraparani River. At that time accused Jothiprakash by using the MAHINDRA ARJUN NOVO 605 TRACTOR bearing No.TN-16-E-7371 illegally transported the river sand without valid permission from the Government Authority. On seeing the said police parties, the accused attempted to escape from that place, immediately, the said police caught him and enquired, searched the said vehicle and found ½ unit of river sand and the same and vehicle seized under cover of seizure mahazar in the presence of witnesses.

3.1. It is submitted that based on the above, a case was registered in Periyathachur Police Station in Crime No.93 of 2023, under Sections 379 & 430 IPC against the accused on 08.04.2023 at about 03.00 hours



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by Tr.K.Mahalingam, the then Sub Inspector of Police and he took up the case for further investigation.

3.2. It is submitted that during the course of investigation, on 06.12.2023, the Investigating Officer has produced the seized properties along with vehicles before the Judicial Magistrate No.II, Tindivanam and the same was taken on file vide P.R.No.245/2023 dated 06.12.2023.

3.3. It is submitted that during the course of pending investigation, the petitioner/accused namely Jothiprakash, filed a petition under Section 451 & 457 Cr.P.C., for return of MAHINDRA ARJUN NOVO 605 TRACTOR bearing No.TN-16-E-7371 before the Judicial Magistrate No.II, Tindivanam in Crl.M.P.No.7019 of 2023 and the same was dismissed on 07.12.2023. He further submitted that the if the vehicle is handed over to the petitioner, he would indulge in similar offences. Further, the learned Government Advocate (Crl.Side) 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.

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4.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:

(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 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 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.”

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5. Considering the submissions the petitioner is an agriculturist. As an agriculturist, usage of tractor is common. Likewise, shifting the soil for rejuvenating the field. The explanation must be reasonable though the vehicle was intercepted while traveling on the road and not any river bed.

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., MAHINDRA ARJUN NOVO 605 TRACTOR bearing No.TN-16-E-7371 to the petitioner on the following conditions:

(i) The petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) 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, to the credit of the District Mines and Minerals Foundation Trust, Villupuram 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 No.II, Tindivanam. 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 certified under Section 65-B of the Indian Evidence Act, 1872;



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

7. Accordingly, the Criminal Revision Petition stands allowed and the impugned order dated 07.12.2023 passed by the learned Judicial Magistrate No.II, Tindivanam, in Crl.M.P.No.7019 of 2023 is set aside.

27.03.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

1.The Inspector of Police,
Periyathachur Police Station,
Villupuram District.

2.The Judicial Magistrate No.II, Tindivanam.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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