



Crl.R.C.No.260 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM

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

Crl.R.C.No.260 of 2024

Shibu, K.V.

... Petitioner

Vs.

State Rep by:-

The Inspector of Police,
K.G.Chavadi Police Station,
Coimbatore District.
(Crime No.179 of 2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.6343 of 2023 on the file of learned Principal District and Sessions Judge, Coimbatore dated 22.12.2023.

For Petitioner : Mr.M.N.Balakrishnan

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



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CrI.R.C.No.260 of 2024

ORDER

The petitioner, who is the owner of the vehicle viz., Mahindra Tipper Lorry bearing registration No.KL-63-G-1200, filed a petition seeking return of property before the learned Principal District and Sessions Judge, Coimbatore in CrI.M.P.No.6343 of 2023. The lower Court, by order dated 22.12.2023, dismissed the same. Against which, the present revision petition is filed.

2.The contention of the petitioner is that the petitioner is hiring his Tipper Lorry bearing registration No. KL-63-G-1200 and making his earnings. He purchased the vehicle by availing financial assistance from Sriram Transport Finance and the vehicle was hypothecated to them. On 20.10.2023, the Assistant Geologist, Geography and Geology Department and his team were keeping a watch near the Tamil Nadu and Kerala border. At that time, the Tipper Lorry of the petitioner was found carrying 6 units of stones without proper permit. When the driver was enquired, he stated that the stones were loaded from Durarock Mines warehouse. Since it was



without permit, the vehicle was seized and a case was registered in Crime No.179 of 2023 for offence under Section 379 of IPC r/w Section 21(1) of Mines and Minerals (Development & Regulation) Act, 1957.

3.The learned counsel for petitioner submitted that the petitioner's lorry was engaged by customers, who took the vehicle. The petitioner has not given any instruction to use the vehicle to mine or transport any minerals and was not aware about the procedure of getting permit. 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 property.

4.The Additional Public Prosecutor appearing for the respondent Police filed his counter and submitted that the case of the prosecution is that on 20.10.2023 at about 12.15 hours, when Tr. M.Balamurugan, Assistant Geology and Mines Department, Chennai came to KG Chavadi Police



Station preferred a written complaint stating that the Special Committee conducted vehicle check-up nearby Walayar Police check post on 20.10.2023 early morning at 01.20 hrs. The special committee checked one Mahindra Tipper Lorry bearing Reg. No.KL-63-G-1200 and found to be carrying 6 Units of ordinary stone minerals without any Government permit or order. On enquiry, the driver of the Tipper Lorry informed that the Mineral Load (Ordinary Stone) has been taken from a mineral warehouse called Dura rock in Madukkarai area and subsequently he was escaped from there. The Tipper Lorry was seized along with the 6 Units of Ordinary Stone Minerals by the complainant and brought to the KG Chavadi Police Station and requested to take action against the Lorry Owner.

4.1. He further submitted that based on the above complaint, a case was registered in KG Chavadi Police Station, Coimbatore District in Crime No.179/2023 under Section 21(1) of MMDR Act & 379 IPC against the owner of the Tipper lorry bearing Reg. No.KL-63-G-1200 on 20.10.2023 at 12.15 hrs., by the Sub Inspector of Police, KG Chavadi P.S., Coimbatore District. After registering the FIR, the Sub Inspector of Police examined the complainant, his committee members and recorded their statements u/s



CrI.R.C.No.260 of 2024

161(3) Cr.P.C. On 11.12.2023, the case properties i.e., Tipper lorry bearing Reg. No. KL-63-G-1200 along with 6 Units of Ordinary Stone Minerals have been produced before the learned District Muncif cum Judicial Magistrate's Court, Madukkarai, Coimbatore and obtained PR No. 235/2023 dated 11.12.2023.

4.2.He further submitted that the petitioner filed a petition before the learned Principal District and Sessions Judge, Coimbatore in CrI.M.P.No.6343 of 2023 seeking to pass an order to return the vehicle ie. Mahindra & Mahindra Tipper lorry bearing Reg.No.KL-63-G-1200 as interim custody and the same was dismissed on 22.12.2023 for the reason that 'confiscation proceeding is pending'.

4.3.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 CrI.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:

(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.”*

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 Tipper Lorry bearing registration No.KL-63-G-1200 to the petitioner on the following conditions:

(i) The petitioner shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh 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, Coimbatore 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 Principal District and Sessions Judge, Coimbatore. 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;

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



Crl.R.C.No.260 of 2024

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7. Accordingly, the Criminal Revision Case stands allowed and the impugned order dated 22.12.2023 passed by the learned Principal District and Sessions Judge, Coimbatore in Crl.M.P.No.6343 of 2023 is set aside.

21.03.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Crl.R.C.No.260 of 2024

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- To
- 1.The Inspector of Police,
K.G.Chavadi Police Station,
Coimbatore District.
 - 2.The Principal District and Sessions Judge,
Coimbatore.
 - 3.The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.260 of 2024

M.NIRMAL KUMAR, J.

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Crl.R.C.No.260 of 2024

21.03.2024