



Crl.R.C.No.271 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.271 of 2024

Subha

... Petitioner

Vs.

State Rep by:-

The Inspector of Police,
Vaitheeswaran Koil Police Station,
Mayiladuthurai District.
(Crime No.270 of 2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.426 of 2024 dated 02.02.2024 on the file of the learned District and Sessions Judge, Mayiladuthurai and set aside the same and release the vehicle namely Mahindra and Mahindra Tractor (Agriculture) bearing registration No.TN-15-3742 and the tipper attached to it bearing TN-15-M-1057 LMV Tipper to the petitioner within the time frame to be stipulated by this Court.

For Petitioner : Mr.S.John Josh

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



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ORDER

The petitioner is the owner of the vehicles viz., Tractor bearing Reg.No.TN-15-3742 and Tipper bearing Reg.No.TN-51-M-1057, has filed a petition under Sections 451 & 457 of Cr.P.C., in Crl.M.P.No.426 of 2024 before the learned District and Sessions Judge, Mayiladuthurai. The learned District and Sessions Judge, Mayiladuthurai *vide* order, dated 02.02.2024 dismissed the said petition, against which, the present Criminal Revision Case is filed.

2.The contention of the petitioner is that the petitioner is hiring Tractor bearing Reg.No.TN-15-3742 and Tipper bearing Reg.No.TN-51-M-1057 and making his earnings. The petitioner is renting out her tractor and tipper and from the earnings, she is sustaining herself. This being so, the vehicle was seized by the respondent Police in Crime No.270 of 2023, for offence under Sections 379 IPC r/w 21(1) of Mines and Minerals (Development & Regulation) Act, 1957. He further submitted that the vehicles are 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 vehicles. He would further submit that due to detention of vehicles, she is unable to continue his routine work and greatly impaired. Hence, he prays for return of property.

3.The learned Additional Public Prosecutor appearing for the respondent Police on the other hand submitted that on 11.12.2023 at 11.00 a.m., when the Sub Inspector of Police attached to the respondent Police along with his team were on patrol duty from Punganur to Melavaravukudi village, the tractor bearing Reg.No.TN-15-3742 and tipper bearing Reg.No.TN-51-M-1057 driven by A1 came there. The Police intercepted the vehicle and made enquiry. On enquiry, it came to light that A1 and A2 illegally transported ½ unit of sand, stocking the same and selling the same at higher rate. On the complaint, FIR in Crime No.270 of 2023, for offence under Sections 379 IPC r/w 21(1) of the Mines and Minerals (Development & Regulation) Act registered on 11.12.2023. On further enquiry, it was found that the petitioner is the owner of the tractor and tipper and she hired



the same to the accused for transporting river sand. Hence, the vehicles were seized. He further submitted that if the vehicles are handed over to the petitioner, she would indulge in similar offences. 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.

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 331and Jayant v. State of M.P., (2021) 2 SCC 670**),*



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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.”*

5.In view of the above, this Court finds that the vehicles are 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 vehicles to the petitioner. The respondent police is directed to return the vehicle, viz., Tractor bearing Reg.No.TN-15-3742 and Tipper bearing Reg.No.TN-51-M-1057 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-15-3742 and Rs.50,000/- (Rupees Fifty Thousand only) for Tipper bearing Reg.No.TN-51-M-1057 before the jurisdictional Tahsildar as non-refundable deposit. After receipt of the above said two payment, the same will have to be deposited by the Tahsildar, to the credit of the District Mines and Minerals Foundation Trust, Mayiladuthurai 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 District and Sessions Judge, Mayiladuthurai. 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 she will not



use the vehicles 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 vehicles;

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

(v) The petitioner shall take photograph of the vehicles 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.

6. Accordingly, the Criminal Revision Petition stands allowed and the impugned order dated 02.02.2024 passed by the learned District and Sessions Judge, Mayiladuthurai in Crl.M.P.No.426 of 2024 is set aside.

21.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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- To
- 1.The Inspector of Police,
Vaitheeswaran Koil Police Station,
Mayiladuthurai District.
 - 2.The District and Sessions Judge,
Mayiladuthurai.
 - 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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