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CrI.R.C.No.479 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.479 of 2024

Kanagaraj

... Petitioner

Vs.

The State of Tamil Nadu,
Rep. by The Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai District.
(Crime No.6 of 2020).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to allow this Criminal Revision Petition and set aside the order passed in CrI.M.P.No.623 of 2024 on the file of the District and Sessions Judge, Mayiladuthurai, dated 01.03.2024 and grant interim custody of the Ashok Leyland (Type of Body Tipper) bearing Registration No.TN-28-AU-7038 in favour of the petitioner.

For Petitioner : Mr.U.Kathiravan

For Respondent : Mr.S.Raja Kumar

Additional Public Prosecutor

ORDER

The petitioner is the owner of the vehicles viz., Ashok Leyland (Type of Body Tipper) bearing Reg.No.TN-28-AU-7038, has filed a petition under Sections 451 & 457 Cr.P.C., in CrI.M.P.No.623 of 2024 before the learned



Crl.R.C.No.479 of 2024

District and Sessions Judge, Mayiladuthurai. The learned Magistrate *vide* order, dated 01.03.2024 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 his Ashok Leyland (Type of Body Tipper) bearing Reg.No.TN-28-AU-7038 and making his earnings. The petitioner is renting out the said vehicle and from the earnings, he is sustaining himself. This being so, the vehicle was seized by the respondent Police in Crime No.6 of 2020, for offence under Sections 379 & 430 IPC r/w 21(1) of Mines & Minerals (Development & Regulation) Act, 1957 on 12.01.2020. The vehicle is said to have transported 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. He would further submit that due to detention of vehicle, he is unable to continue his routine work and greatly impaired. Hence, he prays for return of property.



CrI.R.C.No.479 of 2024

WEB COPY

3.The learned Additional Public Prosecutor appearing for the respondent Police on the other hand submitted that on 12.01.2020 at about 06.00 hours when the Inspector of Police was in station duty, he received secret information about illegal transport of sand without prior permission. The Sub Inspector of Police along with other Police personnels went to the scene of occurrence i.e., Siddamalli Kollidam river, Thailathoppu and found the vehicle., Ashok Leyland (Type of Body Tipper) bearing Reg.No.TN-28-AU-7038 was coming. When the Police intercepted to stop the vehicle, the driver of the vehicle/petitioner attempted to escape. Immediately, the respondent Police stopped the vehicle, conducted search and found the vehicle is in possession of two units of river sand without permission. On enquiry, it came to know that the tipper lorry belongs to the petitioner/accused. On the complaint, FIR in Crime No.6 of 2020, for offence under Sections 379 & 430 IPC r/w 21(1) of the Mines and Minerals (Development & Regulation) Act registered on 12.01.2020. On further enquiry, it was found that the petitioner is the owner of the tipper lorry and he hired the same to others for mining river sand. Hence, the vehicle was



seized. He further submitted that if the vehicle is handed over to the petitioner, he 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**), 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 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., Ashok Leyland (Type of Body Tipper) bearing Reg.No.TN-28-AU-7038 to the petitioner on the following conditions:

(i) The petitioner shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) for Ashok Leyland (Type of Body Tipper) bearing Reg.No.TN-28-AU-7038 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



Crl.R.C.No.479 of 2024

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 01.03.2024 passed by the learned District and Sessions Judge, Mayiladuthurai in Crl.M.P.No.623 of 2024 is set aside.

25.03.2024

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

vv2



Crl.R.C.No.479 of 2024

To

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



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Crl.R.C.No.479 of 2024

M.NIRMAL KUMAR, J.

vv2

Crl.R.C.No.479 of 2024

25.03.2024