



CrI.R.C.No.1791 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1791 of 2023

Sivagandan

... Petitioner

Vs.

The State, Rep by
The Sub Inspector of Police,
Virudhachalam P.S.,
Crime No.384/2021

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.I, Virudhachalam [FAC] in CrI.M.P.No.1699 of 2023 dated 05.06.2023.

For Petitioner : Mr.S.Natarajan

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



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ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 16.11.2023 and 01.12.2023, which read as follows:

'Proceedings dated 16.11.2023:

These cases pertain to Mines and Minerals [Development and Regulation] Act, 1957. Learned Additional Public Prosecutor filed a counter in all the cases.

2.From the cursory look of the counter, it is seen that there is no reason given as to why so far the Police have not intimated about the seizure of the vehicle involved in Mines and Minerals [Development and Regulation] Act, 1957 to the Revenue/Geology Officials enabling them to file a private complaint under Mines and Minerals [Development and Regulation] Act, 1957 and thereafter only, the Special Court will get the jurisdiction. In all these cases without giving such details in paragraph 13 of the counter in Crl.RC.No.1791 of 2023 it is stated as follows:



“13.It is further submitted that the petitioner has to approach the Special Court by filing a fresh application for the return of the vehicle under the Mines and Minerals [Development and Regulation] Act, 1957 before the concerned Designated Court as per the judgment in the “*The District Collector, Pudukottai District & Ors. vs. Muthu & Ors.* [Supra].”

3.This Court is of the opinion that this is not the proper response to the query raised by this Court.

4.In view of the same and considering that there are several cases involving the same issue, this Court appoints Mr.R.Rajarathinam, learned Senior Counsel [No.7, Law Chambers, Madras High Court, Chennai Mob.:7349427294] as Amicus Curie to assist this Court in this case.

5.Learned counsel for the petitioner as well the learned Additional Public Prosecutor to serve the copies to Amicus Curie.

6.Post the matter on 01.12.2023 at 2.30 p.m.

Proceedings dated 01.12.2023:

The Learned Additional Public Prosecutor had filed compilation of judgments referring to the orders of this Court in a batch of cases in Crl.RC.(MD).Nos.470 & etc.,



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batch on 11.10.2023, wherein it has been recorded that around 59,105 cases were registered and 63,542 number of vehicles were involved in transportation of illegal minerals and out of which, only against 2218 vehicles confiscation proceedings were initiated and confiscation proceedings were completed only in 385 cases. He further submitted that the details provided therein are only with regard to the vehicle and there is no particulars with regard to the mineral seized and its confiscation. Since the Division Bench of this Court in Rev.Appl.Writ(MD).Nos.80 to 82 of 2019, dated 09.09.2019 in paragraph 20(ii) clearly stated that the designated Courts are directed to deal with the question of confiscation or release of the vehicles on receipt of the private complaint or seizure report from the person authorized, notwithstanding the exercise of power of compounding. The persons authorized are directed to comply with the earlier directions with reference to making the private complaints. This makes it clear that it is not only the seizure and confiscation of the vehicle but also includes the minerals.

2.The learned Additional Public Prosecutor further submitted that before the Madurai Bench a report is to be filed on 05.12.2023 on the direction issued by the Director General of Police in Rc.No.5229360/Crime.3(1)/2023



dated 09.11.2023 to the Unit Officers i.e., Commissioner of Police of the Commissionerate and Superintendent of Police to all District to issue appropriate directions to all the investigating Officers that, in the pending 63,542 cases to file a petition before the Learned Principal District and Sessions Judge of each District to initiate the confiscation proceedings of the vehicles seized for the offence of illegal mining and transportation, within a period of one week.

3.The report is yet to be filed before the Madurai Bench of this Court. The learned Additional Public Prosecutor further referring to G.O.Ms.No.298, Home (Courts -II) Department, dated 13.06.2019, submitted that designating the Court of Principal Judge, City Civil Court, Chennai and the Principal District Courts/District Courts in each Judicial District, in the State of Tamil Nadu as the Special Courts, specifying the entire territorial limits of the Judicial District concerned as the local limits of the area to which the jurisdiction of the respective Court shall extend and also appoints the Principal Judge, City Civil Court, Chennai and the Principal District Judges/District Judges of the respective judicial District as the Judge of the respective Special Court to try the offences under the said Act.



4.All the Unit Officers have been instructed about Special Court, where the seizure report compliance to be filed and to give details and also the report to be filed before the Madurai Bench of this Court, learned Additional Public Prosecutor seeks two weeks time.

Post the matter on 18.12.2023.'

2.The primary contention of the learned counsel for the petitioner is that the vehicle was seized by the respondent police for involvement of the vehicle in transportation of illegal minerals.

3.The learned Additional Public Prosecutor filed his counter and the objections made is 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.

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.”*

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., Earth Moving Equipment (JCB) bearing registration No.TN-10-AB-5123 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) 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, Cuddalore as non-refundable deposit;



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(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.I, Virudhachalam [FAC]. 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.



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6. Accordingly, the Criminal Revision Petition stands allowed and the impugned order dated 05.06.2023 passed by the learned Judicial Magistrate No.I, Virudhachalam [FAC] in Crl.M.P.No.1699 of 2023 is set aside.

11.03.2024

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

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To

- 1.The Sub Inspector of Police,
Virudhachalam P.S.
- 2.The Judicial Magistrate No.I,
Virudhachalam [FAC].
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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