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CrI.R.C.No.2049 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.2049 of 2023

S.Sekar

... Petitioner

Vs.

The State, Rep by
The Inspector of Police,
Velur Police Station,
Namakkal District.
Crime No.91/2020

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records in CrI.M.P.No.1351 of 2023 on the file of the Principal Sessions Judge, Namakkal and set aside the same subsequently grant interim custody of the vehicle namely JCB bearing registration No.TN-02-AA-6744 to the petitioner in connection with Crime No.91 of 2020 on the file of the respondent police.

For Petitioner : Mr.B.Vetrivel

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



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ORDER

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The petitioner, owner of the JCB bearing registration No.TN-02-AA-6744 filed a petition seeking return of property before the learned Principal Sessions Judge, Namakkal in Crl.M.P.No.1351 of 2023. The Trial Court by order dated 14.08.2023 dismissed the same. Against which, the present revision petition is filed.

2.The contention of the petitioner is that the petitioner is hiring his JCB bearing registration No.TN-22-AA-6744 and making his earnings. The petitioner purchased the JCB as a second owner in the year 2017 and the vehicle is under hypothecation with Sriram Transport Finance Company Limited. The petitioner is renting out his JCB and from the earnings, he is sustaining himself and also paying the monthly EMI. This being so, the vehicle was seized by the respondent police in connection with Crime No.91 of 2020 on 07.03.2020 for the offence under Sections 379 and 511 IPC and Section 21(1) of Mines and Minerals (Development & Regulation) Act, 1957. The petitioner was not seen near the vehicle and not used the vehicle to mine the 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. Further, the petitioner is also forced to pay monthly EMI, otherwise the vehicle would be seized by the Financier. Hence, he prays for return of property.

3.The Additional Public Prosecutor appearing for the respondent Police on the other hand submitted that on 07.03.2020 the Sub-Inspector of Police attached to respondent police submitted a Special report stating that on getting information about excavation and lifting of river sand without permit, she visited the place of occurrence along with the police team. At that time, a JCB bearing registration No.TN-02-AA-6744 was excavating river sand illegally and on seeing the police, the driver abandoned the vehicle and ran away. On enquiry, it was found that the vehicle is owned by the petitioner and using the vehicle for collecting the river sand illegally,



stocking the same and selling the same at higher rate. 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., JCB bearing registration No.TN-02-AA-6744 to the petitioner on the following conditions:

(i) The petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh 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, Namakkal 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 Sessions Judge, Namakkal. 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.

6. Accordingly, the Criminal Revision Petition stands allowed and the impugned order dated 14.08.2023 passed by the learned Principal Sessions Judge, Namakkal in Crl.M.P.No.1351 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 Inspector of Police,
Velur Police Station,
Namakkal District.
- 2.The Principal Sessions Judge,
Namakkal.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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