



Crl.R.C.No.2065 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2065 of 2023

Saraswathi

... Petitioner

Vs.

State Represented by,
The Sub Inspector of Police,
Periyathachur Police Station,
Villupuram District.
(Cr.No.269 of 2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order dated 09.10.2023 in Crl.M.P.No.5974 of 2023 passed by the learned Judicial Magistrate No.II, Tindivanam.

For Petitioner : Mr.M.Machavatharan

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



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ORDER

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The petitioner is the owner of the vehicle viz., Tractor with tipper bearing Reg.No.TN-16-H-8281, has filed a petition under Section 457 & 451 of Cr.P.C., in Crl.M.P.No.5974 of 2023 before the learned Judicial Magistrate No.II, Tindivanam. The learned Magistrate *vide* order, dated 09.10.2023 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 her Tractor bearing registration No.TN-16-H-8281 and making her earnings. The vehicle is under hypothecation with Kotak Mahindra Bank Limited. The petitioner is renting out her tractor and from the earnings, she is sustaining herself and also paying the monthly EMI. This being so, the vehicle was seized by the respondent Police in Crime No.269 of 2023, for offence under Sections 379 & 430 of IPC. Admittedly, the petitioner was not seen near the vehicle and she had not given any instruction to use the vehicle to mine the lake 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, she is unable to continue her 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 learned Additional Public Prosecutor appearing for the respondent Police on the other hand submitted that on 11.09.2023, the defacto complainant viz., the Village Administrative Officer, Venganthur received information about illegal sand mining in Venganthur lake by using JCB and tractors. When the defacto complainant and his Assistant had gone to Venganthur lake, the Tractors bearing Reg.Nos.TN-16-H-9001, TN-16-F-7792 and TN-16-H-8281 were filled up with lake sand by using the JCB bearing Reg.No.TN-16-F-1271 belonging to Thanigaivel/A1. On the complaint of the defacto complainant, an FIR in Crime No.269 of 2023, for offence under Sections 379 & 430 of IPC registered. On enquiry, it was



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found that one of the tractor bearing Reg.No.TN-16-H-8281 is owned by the petitioner and she is using the vehicle for collecting the river and lake 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, 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:



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“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., Tractor with tipper bearing registration No.TN-16-H-8281 to the petitioner on the following conditions:

(i) The petitioner shall deposit a sum of Rs.50,000/- (Rupees 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, Villupuram 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 Judicial Magistrate No.II, Tindivanam. 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 09.10.2023 passed by the learned Judicial Magistrate No.II, Tindivanam in Crl.M.P.No.5974 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,
Periyathachur Police Station,
Villupuram.
 - 2.The Judicial Magistrate No.II,
Tindivanam.
 - 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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