



WEB COPY



Crl.R.C.No.41 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.41 of 2024

Raji

... Petitioner

Vs.

State by

The Station House Officer,
Gingee Police Station,
Villupuram District.
(Crime No.179 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.1886/2023 on the file of learned Judicial Magistrate, Gingee, dated 31st May 2023 and set-aside the same and return the vehicle bearing Reg.No.TN-20-BJ-7954 JCB to the petitioner.

For Petitioner : Mr.A.N.Rajan

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

ORDER

The petitioner is the owner of the vehicles viz., JCB bearing Reg.No.TN-20-BJ-7954, has filed a petition under Sections 451 Cr.P.C., in Crl.M.P.No.1886 of 2023 before the learned Judicial Magistrate, Gingee.



The learned Magistrate *vide* order, dated 21.05.2023 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 his JCB bearing Reg.No.TN-20-BJ-7954 and making his earnings. The vehicle is under hypothecation with United India Insurance Company Limited. The petitioner is renting out the said vehicle 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 Crime No.179 of 2023, for offence under Section 21(1) of Mines & Minerals (Development & Regulation) Act, 1957 on 29.03.2023. The vehicle is said to have transported broken stones which were available in the surfaces and not by any mining. 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 learned Additional Public Prosecutor appearing for the respondent Police on the other hand submitted that on 29.03.2023 at about 17.00 hours when the Special Sub Inspector of Police was in station duty, the Deputy Director, Geology and Research Department, Villupuram lodged a complaint that during surprise visit near Kalavai Junction, one JCB bearing Reg.No.TN-20-BJ-7954 was used for broken the stone without permission. On enquiry, it came to know that the JCB belongs to the petitioner. On the complaint, FIR in Crime No.179 of 2023, for offence under Section 21(1) of the Mines and Minerals (Development & Regulation) Act registered on 29.03.2023. On further enquiry, it was found that the petitioner is the owner of the JCB and he hired the same to others for mining stones and river. Hence, the vehicle was seized. He further submitted that the 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, JCB bearing Reg.No.TN-20-BJ-7954 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 JCB bearing Reg.No.TN-20-BJ-7954 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, 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, Gingee. 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;



Crl.R.C.No.41 of 2024

(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 31.05.2023 passed by the learned Judicial Magistrate, Gingee in Crl.M.P.No.1886 of 2023 is set aside.

25.03.2024

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

vv2



CrI.R.C.No.41 of 2024

WEB COPY

- To
- 1.The Station House Officer,
Gingee Police Station,
Villupuram District.
 - 2.The Judicial Magistrate,
Gingee.
 - 3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.41 of 2024

M.NIRMAL KUMAR, J.

vv2

Crl.R.C.No.41 of 2024

25.03.2024