



Crl.R.C.(MD)Nos.99 and 101 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 13.02.2024

Pronounced on : 28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.(MD)Nos.99 and 101 of 2024

Vijil Kumar

.. Petitioner
in both revisions

Vs.

The State rep. by
The Sub Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
Crime No.261 of 2023

... Respondent
in both revisions

PRAYER : Criminal Revision Cases are filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the impugned order, dated 19.12.2023 passed by the learned Principal Sessions Judge, Kanyakumari District at Nagercoil made in Cr.M.P.No.7045 and 7046 of 2023 in Crime No.261 of 2023 and consequently direct the respondent herein to handover the vehicles



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bearing Registration No.SY35 HYD Excavator Short Track Serial No. 23SY35Y000355 and Mahindra and Mahindra Tipper Lorry bearing Registration No.TN-75-F-4848 to the petitioner.

For Petitioner : Mr.R.J.Karthick (in both revisions)

For Respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor
(in both revisions)

COMMON ORDER

With the consent of both Mr.R.J.Karthick, learned counsel appearing for the petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing on behalf of the State, the present Criminal Revision Petitions have been taken up for final disposal at the admission stage itself.

2. The learned counsel for the petitioner would submit that the petitioner is the owner of the alleged vehicles viz., SY35 HYD Excavator Short Track Serial No.23SY35Y000355 and Tipper Lorry bearing Registration No.TN-75-F-4848 and the said vehicles were allegedly involved in transportation of theft of red sand and hence, a



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case was registered in Crime No.261 of 2023 for the offences punishable under Sections 379 of IPC and thereafter, the said vehicles were seized and produced before the concerned Jurisdictional Magistrate and the same is being in the custody of the Court in SR No. 6798 of 2023. Thereafter, the petitioner had filed the petitions in Cr.M.P.Nos.7045 and 7046 of 2023 before the Court below seeking return of the vehicles and the same was dismissed. Challenging the same, the present Criminal Revisions are filed.

3. The learned counsel for the petitioner would further submit that the trial Court negatived the relief sought for by the petitioner in the light of the judgment of this Court in Crl.R.C(MD) No.470 of 2023 dated 11.10.2023. In the present case, the confiscation proceedings had not even taken on file even after the passing of the impugned order and hence, he prays for allowing the Criminal Revision.



4. The learned Additional Public Prosecutor would submit that if the custody vehicles are handed over to the petitioner, the vehicles might be utilized for the similar purpose in future and there is every possibility to sell the vehicles to some third party and also to alter the vehicles which may affect the trial proceedings.

5. It is the contention of the learned Additional Public Prosecutor is that in view of the order dated **29.01.2024** passed by this Court *in Crl.O.P.No.646 of 2024 in Annadurai Vs. The Inspector of Police, Kurisilapet Police station, Thirupathur District*, the present case has to be remanded back to the concerned Judicial Magistrate for deciding the matter. The relevant portion of the order is extracted hereunder :

“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;



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(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



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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.”

6. Considering the facts and circumstances of the case and also in the light of the order passed by this Court in Crl.O.P.No.646 of 2024 dated 29.01.2024 as stated supra, without going into the merits of



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the case, this Court disposes the present Criminal Revision Petitions and the matters are remitted back to the concerned Jurisdictional Magistrate, with a direction to the learned Judicial Magistrate, to consider the matters after hearing the petitioner and pass appropriate orders on its own merits and in accordance with law, as expeditiously as possible, preferably, within a period of two weeks from the date of receipt of a copy of this order.

28.03.2024

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

PKN

Copy to

1. Principal Sessions Court, Nagercoil.

To

1. The Sub Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District at Nagercoil.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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VIVEK KUMAR SINGH, J.

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