



Crl.R.C(MD) No.380 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD) No.380 of 2024

Sampath

... Petitioner / Petitioner

Vs.

**State of Tamil Nadu,
Through the Forest Range Officer,
Forest Range Office,
Ayyalur, Dindigul District.**

...Respondent / Respondent

PRAYER : Criminal Revision Petition is filed under Sections 397 & 401 of Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate, Vendasandur in Cr.M.P.No.80 of 2024, dated 12.03.2024 and order interim custody of the TATA ACE bearing Registration No.TN 57 BJ 2160 with the petitioner as sought for, which was seized by the respondent.

For Petitioner : Mr.D.Venkatesh

**For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor**



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JUDGMENT

This Criminal Revision Case is filed by the owner of the property seeking interim custody of the property i.e, TATA ACE bearing Registration No.TN 57 BJ 2160 by setting aside the impugned order, dated 12.03.2024 passed in Cr.M.P.No.80 of 2024, on the file of the learned Judicial Magistrate, Veda sandur.

2. The property is seized by the respondent police in the FIR in WLOR.No.4 of 2024, for the offence under Sections 2(1),(12B),(14),(16), (22),(26A),(33),(36),(37),(39),(51) of Wile Life Protection Act, 1972 (Amendment in 2022).

3. Thereafter, the petitioner filed the petition before the concerned trial Court under Section 451 Cr.P.C., seeking interim custody of the said property. The learned Judicial Magistrate has dismissed the said petition stating that the confiscation proceeding has been initiated by the Authorized Officer under Section 50(B) of Wile Life Protection Act, 1972 and hence, the return of properties under Section 451 Cr.P.C., is not entertained.



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4.The learned counsel appearing for the petitioner would rely upon the judgment in **2008 (14) SCC 624 in the case of State of Madhya Pradesh and others Vs. Madhukar Rao**, similar provision of the Wild Life Protection Act is considered and held as follows:

“22. We have, therefore, no doubt that the provisions of Section 50 of the Act and the amendments made thereunder do not in any way affect the Magistrate's power to make an order of interim release on the vehicle under Section 451 of the Code.

23. Learned counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1)(c) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High



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Court and on an examination of the various provisions of the Act, it was held that the provision of Section 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations / allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section 39(a)(d) cannot be used against exercise of the magisterial power to release the vehicle during pendency of the trial.”



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5. In view of the above ratio laid down by the Hon'ble Supreme court, this Court directed the Additional Public Prosecutor to verify the same. The learned Additional Public Prosecutor after verifying the same, submitted that said law laid down by the Hon'ble Supreme Court is final and the same is still hold good.

6.This Court considered the submission of the learned counsel appearing on either side and the precedents relied upon them.

7.This Court considered the Judgment of the Hon'ble Supreme Court reported in the case of State of **Madhya Pradesh and others Vs. Madhukar Rao (2008 (14) SCC 624)** held that the said principle is applicable to the said case in favour of the petitioner. In this case also the vehicle was seized under the Wild Life Act and not under the Forest Act. Further, the learned Additional Public Prosecutor has ascertained that the judgment (2008 (14) SCC 624) is hold good.



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8. Apart from that the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat, 2002 10 SCC 283** issued detailed guidelines to grant the interim custody.

9. Considering the above law laid down by **(2008 (14) SCC 624)** and **Sunderbhai Ambalal Desai v. State of Gujarat**, this Court inclined to allow the Revision. Hence, the impugned order passed by the learned Judicial Magistrate, Vendasandur in Cr.M.P.No.80 of 2024, dated 12.03.2024 is set aside.

10. Accordingly, this Revision is allowed in the following terms:-

i) The petitioner is directed to execute the sureties for the value of the said property.

ii) The petitioner shall not alienate or tamper the physical features of the vehicle till the disposal of the revision cases.

iii) The petitioner is directed to file an affidavit to surrender the property before the trial Court in the event of the case is ended in conviction.



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(iv) The petitioner should surrender his original RC Book before this Court.

(v) The petitioner is directed to take four side photographs of his vehicle and shall produce it before the Court in accordance with the Rule 257 of the Criminal Rules of Practice, 2019 framed by this court.

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NCC :Yes/No

Index :Yes/No

Internet :Yes/No

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Note:Issue Order Copy on 17.04.2024.



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- 1.The learned Judicial Magistrate,
Vedasandur.
- 2.The Forest Range Officer,
Forest Range Office,
Ayyalur, Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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