



CRL.RC.(MD)No.851 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC.(MD)No.851 of 2024

P.Palanichamy

... Revision Petitioner/Owner of the Property

Vs.

The Deputy Superintendent of Police,
Melur Sub Division,
Keelavalavu Police Station,
Madurai District.
In Crime No.171 of 2012
(RPR No.272 of 2012)

... Respondent/Respondent

PRAYER : Criminal Revision Case filed under Section 438 r/w 442 BNSS, to call for the records pertaining to the order passed by the Special District Court to deal with the cases of offences in Contravention of the Provisions of the Mines and Minerals (D & R)Act, 1957, Madurai in Crl.M.P.No.2264 of 2024 dated 15.06.2024 and to set aside the same and direct the Special Court to issue the R.C.Book and permit as interim custody for 30 days.

For Petitioner : Mr.M.Chandra Sekaran

For Respondent : Mr.K.Sanjai Gandhi,
Government Advocate (Crl. Side)



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ORDER

This criminal revision case is directed against the order passed in Crl.M.P.No.2264 of 2024 in Spl.S.C.No.17 of 2021, dated 15.06.2024 on the file of the Special District Court to deal with the cases of offences in Contravention of the Provisions of the Mines and Minerals (D & R)Act, 1957, Madurai dismissing the petition filed under Section 451 Cr.P.C.

2.The petitioner is facing a case in Spl.S.C.No.17 of 2021 for the alleged offence under Sections 120(b), 447, 379, 201, 420 r/w 109 of IPC, r/w Sections 3(i) & 4(i) TNPPDL Act and Section 4 of the Explosives Substance Act and Sections 4(1), 4(2)(A), 4(3)5 and 21(b) of the Mines and Minerals (Development and Regulations)Act.

3.It is not in dispute that after registration of FIR, in Cr.No.171 of 2012, the passenger route bus bearing Reg.No.TN-60-F 9279 was recovered and produced before the jurisdictional Court and the said property has been received and remanded by the said Court. It is also not in dispute that the petitioner, claiming to be a owner of the said vehicle,



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has filed an application through his power of attorney seeking interim custody of the vehicle in CrI.M.P.No.6656 of 2012 and the learned Judicial Magistrate, Melur has passed an order dated 29.10.2012 granting interim custody of the vehicle to the petitioner by imposing conditions. In pursuance of the said conditions, the petitioner has surrendered the original RC Book in respect of the bus bearing Reg.No.TN 60 F 9279 before the learned Judicial Magistrate, Melur and the same is in the custody of the said Court till now.

4.The petitioner's contention is that the said vehicle is operating as passenger route bus for more than a decade, that the above said vehicle is of 2010 model and already ran for above 13,52,487 Kms, that since the vehicle has become old, they are facing repair very often and even breaking down with the passengers, that the petitioner after deciding to purchase a new vehicle for replacing the old vehicle now in dispute and for the permit process, the petitioner is in need of RC Book for the old vehicle, that therefore, the petitioner has filed an application under Section 451 Cr.P.C., seeking interim custody of the RC Book for the period of thirty days, for the purpose of getting replacement of the



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vehicle from the Transport Authority and that the learned Special Judge, after enquiry has passed the impugned order dated 15.06.2024 dismissing the petition and that therefore, the petitioner is constrained to file the present revision invoking Section 438 r/w 442 BNSS.

5.The learned counsel appearing for the petitioner would submit that the petitioner has also decided to keep the old vehicle with him, since it has to be marked in the trial as material object, that he has no plan to sell the said vehicle, that the petitioner is holding valid stage carriage permit on the route from Madurai to Kambam in respect of the vehicle in dispute, that the petitioner has decided to purchase new vehicle for replacing the old vehicle and that the learned Special Judge without considering the request of the petitioner in proper perspective has dismissed the petition mechanically.

6.It is seen from the impugned order that the learned Special Public Prosecutor appearing for the respondent has raised objection by stating that the vehicle was handed over to the petitioner for interim custody with a condition not to alter, change, mortgage, sell or in any



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other manner transfer or encumber the property till the disposal of the main case and that if the vehicle will be permitted for alteration, the same cannot be marked at the time of trial and further affect the main case.

7.The learned Special Judge, by simply observing that the vehicle is material object, which has to be marked at the time of trial and that the prosecution cannot mark another property during trial instead of marking seized property as stated by the prosecution, has held that the petition is devoid of merits and liable to be dismissed.

8.The learned counsel appearing for the petitioner would submit that when the owner of the vehicle holding stage carriage permit and which was involved in the criminal case and was returned to the petitioner for interim custody, has sought for permission from the Regional Transport Authority for replacing the vehicle and when the same was rejected by the Authority, the owner has approached this Court by filing writ petitions and this Court by setting aside the rejection order directed the Regional Transport Authority to permit the owner thereon to replace the vehicle by a new vehicle and relied on the order passed in



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WP.(MD)No.6067 of 2021 dated 26.03.2021 (K.Amaresan Vs. The District Collector cum the Regional Transport Authority Dindigul and Ors) and the relevant passages are extracted hereunder:-

5.As rightly pointed out by the learned counsel appearing for the petitioner, the case on hand is no longer res integra. Vide Order dated 30.09.2020 in W.P. (MD)No.12245 of 2020 I allowed the writ petition. The said writ petition is containing similar prayer.

Paragraph Nos.4 to 8 of the said order read as follows:-

“4.The stand of the respondents is that if the petitioner is allowed to replace the vehicle, the character of the vehicle will change from being a public service vehicle to an idle vehicle. I am not impressed by the aforesaid objection. The learned counsel for the petitioner drew to my attention to the relevant provisions set out in Tamil Nadu Motor Vehicles Rules.

They are as follows:-

“201. Permit — replacement of vehicle application.

(1) If the holder of a permit desires at any time to replace a vehicle covered by the permit with another vehicle he shall forward the permit and apply in



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writing to the Transport Authority by which the permit was issued stating the reasons why the replacement is desired and shall—

(i) if the new vehicle is in his possession forward the certificate of registration thereof; or

(ii) if the new vehicle is riot in his possession, state any material particulars in respect of which the new vehicle will differ from the old.

(2) The fee payable in respect of an application for replacement of a vehicle by another vehicle, other than involving variation of permit and in respect of vehicles involving variation of permit shall be such fee as prescribed in rule 279.

202. Rejection of application. Upon receipt of an application under rule 201 the Transport Authority may in its discretion reject the application—

(i) if it has previous to the date of the receipt, of the application, given reasonable notice of its intention to reduce the number of transport vehicles of that class generally or in respect of the route or area to which the permit applies; or

(ii) if the new vehicle proposed differs in material respects from the old; or

(iii) if the holder of the permit has contravened the provision thereof or has been deprived of



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possession of the old vehicle under the provisions of any agreement of hire purchase.

203. Procedure on granting replacement.— If the Transport Authority grants an application for the replacement of a vehicle under rule 201 it shall call upon the holder of the permit to produce the permit relating to the old vehicle and the certificate of registration of the vehicle if not previously delivered to it and shall correct the permit accordingly under its seal and signature and return them to the holder.”

5.The learned counsel for the petitioner submitted that the petitioner has complied with all the requirements set out in Rule 201. There can be no dispute whatsoever that the petitioner is in possession of a new vehicle and he is also having the certificate of registration. In such a case, the application could have been rejected only on one of the three grounds set out in Rule 202. I sustain the contention of the petitioner's counsel that the reason for rejection will not fall under any of the three circumstances set out in Rule 202. The petitioner's counsel would point out that the discretion of the authority is circumscribed by Rule 202. The respondents cannot invent a fourth ground for



rejection of the application for replacement of the vehicle.

6.In the case on hand, it is true that the petitioner's vehicle was seized by the police and that it was returned pursuant to the orders of the jurisdictional Magistrate. The petitioner's counsel states that even after replacing the vehicle, he will continue to pay idle tax for vehicle and that he will comply with the conditions stipulated by the jurisdictional Magistrate.

7.The second respondent in his counter has claimed that if the vehicle is replaced, the character of the vehicle will get changed. When the jurisdictional Magistrate imposed a condition that the character of the vehicle should not be changed, he only meant that the vehicle as a physical object should be maintained as such. The learned Magistrate could not have meant anything else.

8.That apart the vehicle in question has become fairly old. If it is replaced by new vehicle, it will only benefit the passengers. The first respondent has not taken note of this relevant and vital aspect.

Looked at from any angle, the order impugned in the writ petition is not sustainable. It is quashed. The writ



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petition is allowed. The respondents 1 and 2 are directed to permit the petitioner to replace the petition mentioned vehicle by the new vehicle bearing Registration No.TN-51-K-0715. No costs. Consequently, connected miscellaneous petitions are closed.”

6.This order was put to challenge in W.A.(MD)No. 395 of 2021. The Hon'ble Division Bench vide order dated 15.03.2021, sustained the order passed by this Court.

7.Therefore, I am of the view that this writ petition can also be allowed on the same terms. The petitioner's counsel gives an undertaking that the petitioner's vehicle that was released in terms of the order passed by the jurisdictional Magistrate will be kept correctly and will not be alienated and he will continue to pay idle tax for the vehicle.

8.Recording the said submission, the order impugned in this writ petition is quashed. Respondents 1 and 2 are directed to permit the petitioner to replace the vehicle by the new vehicle. This writ petition stands allowed. No costs.



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9.The above decision is squarely applicable to the case on hand. In the present case, the petitioner has sought for returning of RC Book for 30 days to replace of the vehicle and get orders from the Transport Authority. The submissions of the petitioner is that he is not going to sell the vehicle in dispute and after purchase of new vehicle, he is going to keep the old vehicle with him for the purpose of marking the same as material object during trial in the above case and that the petitioner undertakes to return the RC Book for the vehicle in dispute within 30 days from the date of receipt of the same from the concerned Court, are hereby recorded.

10.Considering the above, this Court has no hesitation to hold that the learned Special Judge, without considering the above facts and circumstances in proper perspective and only by relying on the objection raised by the prosecution has passed the impugned order rejecting the petitioner's claim and as such, the same is liable to be set aside.

11.In the result, this criminal revision case is allowed and the impugned order in Crl.M.P.No.2264 of 2024 dated 15.06.2024 passed by



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the Special District Court to deal with the cases of offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, 1957, Madurai is hereby set aside. The learned Judge is directed to return the RC Book in respect of the vehicle bearing Reg.No.TN-60-F 9279 to the petitioner on proper acknowledgment and the petitioner is directed to re-submit RC Book, within 30 days from the date of receipt of the same before the concerned Court.

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NCC : Yes / No
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Internet : Yes / No
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To

- 1.The Special District Court to deal with the cases
of offences in Contravention of the Provisions
of the Mines and Minerals (D & R)Act, 1957,
Madurai.
- 2.The Deputy Superintendent of Police,
Melur Sub Division,
Keelavalavu Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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