



Crl.O.P.(MD)No.16496 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.10.2024

Pronounced on : 13.11.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.16496 of 2024

Vijila

... Petitioner

Vs.

The Inspector of Police,
Marthandam Police Station,
Marthandam,
Kanyakumari District.
(Crime No.332 of 2023)

... Respondent

Prayer : This Criminal Original Petition filed under Section 528 B.N.S.S., to set aside the docket order dated 08.05.2024 passed by the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District in Un-numbered Crl.M.P.No. Of 2023 in Crime No.332 of 2023 dated 01.09.2023 and thereby to consequently order the respondent to release the petitioner's Tractor FARMTRA60 with compressor bearing Registration No.TN-32C-4412 that was seized by the respondent on 01.09.2023.



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Crl.O.P.(MD)No.16496 of 2024

For Petitioner : Mr.A.Robinson

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

The Criminal Original Petition is directed against the order of return dated 08.05.2024 made in the application filed under Section 451 of the Code of Criminal Procedure seeking interim custody of the vehicle.

2. The respondent police registered a case in Crime No.332 of 2023 on 01.09.2023 for the alleged offences under Section 379 IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act.

3. It is not in dispute that the respondent police has seized the Tractor FARMTRA60 with compressor bearing Registration No.TN-32C-4412 and the same was produced before the jurisdictional Court and that the said vehicle was received and remanded in R.P.No.336 of 2023 on the file of the Judicial Magistrate Court No.I, Kuzhithurai.



Crl.O.P.(MD)No.16496 of 2024

WEB COPY

4. The case of the petitioner is that the petitioner's husband Sundar Raj is the registered owner of the said vehicle and all the documents pertaining to the vehicle stands in the name of petitioner's husband, that the petitioner's husband passed away on 02.02.2022 leaving behind the petitioner/wife, daughter Suthisha, minor son Shijohin and mother Leela as legal heirs and that the petitioner's daughter and mother-in-law have given their consent and authorised the petitioner to file an application for return of vehicle and accordingly, the petitioner has filed an application under Section 451 Cr.P.C. seeking interim custody of the vehicle and that the learned Magistrate has passed the impugned order dated 08.05.2024 returning the petition. Challenging the return of the application filed under Section 451 Cr.P.C., the present revision came to be filed.

5. It is necessary to refer the return order made by the learned Magistrate,

“As per order passed by our Hon'ble High Court of Madras in Crl.R.C.No.755 of 2021 dated 23.03.2021, held that provision of Section 451 of Cr.P.C. is not applicable, when the confiscation proceeding is initiated under Section 21(4-A) of the MMDR Act. Here in also confiscation proceeding pending before this Court. Hence,



Crl.O.P.(MD)No.16496 of 2024

this petition is returned.”

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6. The learned counsel appearing for the petitioner would submit that the learned Magistrate relied upon the judgment passed in Crl.R.C.No. 755 of 2021 on the ground that the power under Section 451 Cr.P.C. is not applicable when confiscation proceeding is initiated under Section 21(4-A) of the MMDR Act but the Madras High Court has allowed a batch of similar petitions in Crl.O.P.Nos.646, 661, 668, 681 and 1146 of 2024 vide order dated 29.01.2024 directing the concerned Magistrate to take the applications for release of the vehicle on file and dispose of the same in accordance with law, that the learned Magistrate, without adhering to law set out in the above judgment, has returned the petitioner's application, that the petitioner's grievance that the vehicle kept in open space exposed to sun light and rain would diminish the value of the vehicle was not at all considered by the learned Magistrate, that confiscation proceedings are entirely different and the same has nothing to do with the property seized under Section 457 Cr.P.C. and that therefore the impugned docket order returning the application filed under Section 451 Cr.P.C. is liable to be set aside.



Crl.O.P.(MD)No.16496 of 2024

WEB COPY

7. The learned Magistrate has relied on the decision of this Court in ***Krishnamoorthy Vs. State rep. by Inspector of Police, Keelaiyur Police Station*** reported in ***(2022) 1 LW (Cri) 772***, wherein, a learned Judge of this Court has referred to the decision of the Division Bench of Allahabad High Court in ***Virendra Gupta Vs. State of U.P.*** reported in ***2019 (6) ADJ 432*** and the decision of the Hon'ble Supreme Court in ***State of M.P. Vs. Uday Singh*** reported in ***(2020) 12 SCC 733*** and some other decisions and observed as follows:-

“15. The Allahabad High Court, in a recent decision in Akhilesh Kumar vs. State of U.P. and another (in Application No.20096 of 2021 dated 4.3.2022), dealt with a question as to whether pending confiscation proceedings, the Magistrate/Court has jurisdiction to release any property which is the subject matter of confiscation and by referring the decision of a Division Bench of the same Court, has held as under:-

"6. Now the question is whether during confiscation proceedings under section 72 of U.P. Excise Act, the Magistrate is empowered to release the vehicle. In case of (Nand vs. State of U.P.) 1997 (1) AWC 41 and (Rajeev Kumar Singh vs. State of U.P. and ors) 2017 (5) ADJ 351, the learned Single Judge of this Court held that the Magistrate has



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Crl.O.P.(MD)No.16496 of 2024

jurisdiction while in the case of Ved Prakash vs. State of U.P. 1982 AWC 167 another Bench of this Court held that the Magistrate has no jurisdiction in the matter. The matter again came before another learned Single Judge of this Court and taking notice of the conflicting views the learned Single Judge referred the matter to Division Bench. The Division Bench in (Virendra Gupta vs. State of U.P). 2019 (6) ADJ 13 432 (DB), on the aforesaid reference formulated the following question:

“Whether pending confiscation proceedings under Section 72 of the U.P. Excise Act before the Collector; the Magistrate/ Court has jurisdiction to release any property subject-matter of confiscation proceedings in exercise of powers under Sections 451, 452 or 457 of the Code of Criminal Procedure?”

7. The Division Bench interpreting the various provisions of Cr.P.C. and U.P. Excise Act and the law laid down by the Apex Court in (Sunderbhai Ambalal Desai vs. State of Gujarat), 2002 (10) SCC 283 and (State GNCJ of Delhi) vs. Narendra (2014) 13 SCC 100 answered the aforesaid question in para no.20 of the judgment



WEB COPY



Crl.O.P.(MD)No.16496 of 2024

which is reproduced as below:

“In view of the foregoing discussion, we find that the case of Ved Prakash (supra) lays down the correct law on the subject-matter of this reference and neither Nand vs. State of U.P., 1997 (1) AWC 41 or Rajiv Kumar Singh vs. State of U.P. and others, 2017 (5) ADJ 351 nor Sunderbhai Ambalal Desai vs. State of Gujarat, 2002 (10) SCC 283, can be said to be authorities on the power of the Magistrate to release anything seized or detained in connection with an offence committed under the ‘Act’ in respect of which confiscation proceedings under Section 72 of the U.P. Excise Act are pending before the Collector.”

8. So the law has been settled by the Division Bench of this Court which has held that during confiscation proceeding, the Magistrate has no power under sections 451 or 457 Cr.P.C. to release the vehicle.

9. Learned counsel for the revisionist has placed reliance on the case of Chandra Pal vs.



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Crl.O.P.(MD)No.16496 of 2024

State of U.P. in Application U/s 482 Cr.P.C. No. 1325 of 2021 decided on 21.02.2021 and Murad Ali vs. State of U.P. and two ors in Application U/s 482 Cr.P.C. No.21547 of 2021 decided on 23.11.2021. In the aforesaid case, the learned Single Judge has held that Magistrate has jurisdiction to release the vehicle during confiscation proceedings but in view of the law propounded by the Division Bench of Allahabad High Court this view cannot be adopted.

10. From the aforesaid discussion, it is clear that during confiscation proceedings, the Magistrate has no jurisdiction to release the vehicle seized under section 72 of U.P. Excise Act. The findings recorded by the learned Magistrate and upheld by the revisional court are according to law. There is no illegality or infirmity in the impugned order and the application U/s 482 Cr.P.C. is liable to be dismissed."

16. In the decision in State of M.P. v. Uday Singh ((2020) 12 SCC 733) cited supra, the Apex court has heavily come down against the antisocial elements that pose a danger to the natural environment and recognized the significance of confiscation proceedings as the effective deterrent measure to eradicate such hazards



WEB COPY



Crl.O.P.(MD)No.16496 of 2024

while dealing with the cases of illegal mining.

17. The Allahabad High Court, in Akhilesh Kumar vs. State of U.P. and another cited supra, when confronted with the conflicting decisions, clarified the issued based on the decision of a Division Bench of the same court and rendered a decision against release of the vehicle pending confiscation proceedings.

18. Once again coming to sub-section (4-A) of Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957, it emphasizes that any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court, which means that disposal of the seized vehicles shall be in accordance with the directions of such Court viz., the Special Court.

19. It is seen that in the instant cases, the data produced by the learned Public Prosecutor shows that in all the cases, confiscation proceedings had already been initiated. Therefore, this court is of the view that in the interest of justice, it would suffice if a direction is given for conclusion of the confiscation proceedings within a time



WEB COPY



Crl.O.P.(MD)No.16496 of 2024

frame. Accordingly, while rejecting the plea for the release of the vehicles in question, it is hereby ordered that the confiscation proceedings shall be concluded within a period of six months from the date of receipt of a copy of this order and the petitioners/owners of the vehicles shall co-operate for conclusion of the confiscation proceedings without protracting any longer.”

8. The learned Judge has also observed that in spite of cases, it has become a never ending story that on one side, the owners of the vehicles are being given interim custody considering the grievance expressed by them and on the other side, the same vehicles are involved in similar offences time and again. In the above decision case, confiscation proceedings had already been initiated in all the cases and hence, the learned Judge, while rejecting the plea for the release of the vehicles in question, directed to conclude the confiscation proceedings within a period of six months from the date of receipt of a copy of that order.

9. The learned counsel appearing for the petitioner would rely on the decision passed in batch of original petitions in ***Crl.O.P.Nos.646 of 2024 batch vide order dated 29.01.2024***, wherein, a learned Judge of this



Crl.O.P.(MD)No.16496 of 2024

WEB COPY

Court, after referring various decisions, has summarised the legal position and the relevant portions are 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;

(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;

...

(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;”

10. In the above decision, the learned Judge has clarified that a complaint under Section 21 of the MMDR Act, 1957 can be filed only before the jurisdictional Magistrate empowered to take cognizance of the



Crl.O.P.(MD)No.16496 of 2024

WEB COPY

offence and as per Section 21(4-A) of the MMDR Act, an application for release of vehicle will lie only before the jurisdictional Magistrate and that the jurisdictional Magistrate alone is empowered to initiate confiscation proceedings. No doubt, as per the above decision, the jurisdictional Magistrate is the competent authority to consider the application for release of vehicle, but as per the decision of this Court in ***Krishnamoorthy's*** case above referred, once confiscation proceedings has already been initiated, then the question of returning the vehicle on interim custody does not arise.

11. In the case on hand, the learned Magistrate in the impugned order itself has specifically noted the pendency of the confiscation proceedings and more importantly, in the present application, while returning the application for the first time, it has been endorsed by the Court that already confiscation proceedings under Crl.M.P.No.3826 of 2024 is pending. Since confiscation proceedings has already been initiated, the impugned order returning the application filed under Section 451 Cr.P.C., cannot be found fault with. Hence, this Court concludes that the petition is devoid of merits and the same is liable to be dismissed.



Crl.O.P.(MD)No.16496 of 2024

12. In the result, this Criminal Original Petition stands dismissed.

WEB COPY

13.11.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

- 1.The Judicial Magistrate No.I,
Kuzhithurai, Kanyakumari District.
- 2.The Inspector of Police,
Marthandam Police Station,
Marthandam,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrI.O.P.(MD)No.16496 of 2024

K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
CrI.O.P.(MD)No.16496 of 2024**

Dated : 13.11.2024