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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON

Crl.R.C(MD)No.1095 of 2023	12.10.2023
Crl.R.C.(MD).No.1134 of 2023	30.10.2023
Crl.R.C.(MD).No.1149 of 2023	01.11.2023
Crl.R.C.(MD).No.1103 of 2023	02.11.2023
Crl.R.C.(MD).Nos.1231 and 1236 of 2023	22.11.2023
Crl.R.C.(MD).No.1243 of 2023	23.11.2023
Crl.R.C.(MD).No.1213 of 2023	27.11.2023

**PRONOUNCED ON
15.02.2024**

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)Nos.1095, 1134, 1149, 1103, 1231, 1236, 1243,1213 of 2023

Crl.R.C(MD)No.1095 of 2023

Arunpandi

... Petitioner

Vs.

The Inspector of Police,
Kariyapatti Police Station,
Virudhunagar District.
(Crime No.209 of 2021)

... Respondent

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PRAYER : This Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 22.08.2023 made in Cr.M.P.No.4312 of 2023 on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and set aside the order and direct the respondent herein to grant interim custody of the vehicle viz., TATA MEGA ACE bearing Reg.No.TN 67 BE 5720, which has been seized by the respondent herein in Crime No.209 of 2021.

Appearance for respective petitioners:-

<i>Crl.R.C.(MD).Nos.</i>	<i>Name of the Counsel</i>
1095 of 2023	Mr.G.Mariappan
1134 of 2023	Mr.D.S.Haroon Rasheed
1149 of 2023	Mr.A.Balaji
1103 of 2023	Mr.G.Mariappan
1231 of 2023	Mr.P.Saravanakumar
1236 of 2023	Mr.P.Saravanakumar
1243 of 2023	Mr.B.Muneeswaran
1213 of 2023	Mr.M.Jothi Basu

For Respondent in : Mr.S.Manikandan
Crl.R.C(MD)No.1095 of 2023 Government Advocate (Crl.side)

For Respondent : Mr.K.Sanjay Gandhi
in all other cases Government Advocate (Crl.side)



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COMMON ORDER

All the petitions filed to seek the interim custody of the vehicle involved in the illegal transportation of the mines. After hearing the arguments of the counsel, the case was reserved for orders. On the date of the argument, the learned Government Advocate (Crl.side) placed reliance on the order passed by the learned Single Judge of this Court in the case of **Ramar Vs. The State (Crl.R.C(MD)No.470 of 2023, dated 11.10.2023.** Now, the another learned Single Judge of this Court in **Crl.O.P.Nos.646 of 2024 etc., dated 29.01.2024** 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;



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(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 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".*

2. In view of the above decision of the learned Single Judge of this Court, the Special Court constituted for speedy trial of the case, which was committed by the Judicial Magistrate concerned and the Special Court cannot directly take cognizance of the offences in complaint under MMDR Act without an order of committal by the Judicial Magistrate concerned. It is also held that the Judicial Magistrate is empowered to take cognizance of case under MMDR Act and to pass order under Section 451 Cr.P.C. until committal order passed. Therefore, the impugned orders passed by the learned Principal District and Sessions Judge in each cases lacks of cognizance to entertain petition under Section 451 of Cr.P.C. Therefore, this Court is inclined to set



aside the impugned order passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in CrI.M.P.Nos.4312, 4697, 4471, 4357, 4801, 4698, 5325, 4630 of 2023 and to allow these Criminal Revisions with the following directions:

(i) The impugned order passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in CrI.M.P.Nos.4312, 4697, 4471, 4357, 4801, 4698, 5325, 4630 of 2023 are hereby set aside.

(ii) The petitioner in each case are hereby granted liberty to file appropriate petition before the Jurisdictional Judicial Magistrate Court and the learned Jurisdictional Judicial Magistrate is hereby directed to decide the petition, if so filed, for interim custody of the vehicle in accordance with law within two months from the date of filing of such petition.

15.02.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To

- 1.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.
- 2.The Inspector of Police,
Kariyapatti Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Orders made in
Crl.R.C(MD)Nos.1095, 1134, 1149, 1103, 1231, 1236,
1243,1213 of 2023

15.02.2024