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Crl.R.C(MD)No.1071 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.11.2024

Pronounced on : 10.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1071 of 2024

Ambikapathy

... Petitioner

Vs.

1.State rep. by
The Sub Inspector of Police,
Melur Police Station,
Madurai District.
(Crime No.427 of 2024)

2.B.Pandiselvi

... Respondents

PRAYER : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for the records made in Cr.M.P.No.343 of 2024 on the file of the Judicial Magistrate, Melur, Madurai District filed by the petitioner under Section 497 and 503 of BNSS Act, 2023 for return of vehicle and set aside the dismissal order, dated 30.09.2024.

For Petitioner : Mr.P.Surliraja

For R1 : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)

For R2 : Mr.I.Sriranganathan



ORDER

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This Criminal Revision Case is filed to set aside the order, dated 30.09.2024 passed in Cr.M.P.No.343 of 2024 on the file of the learned Judicial Magistrate, Melur, dismissing the petition filed by the petitioner under Sections 497 and 503 of BNSS for return of Tractor bearing registration number TN-50-T-2397 along with unnumbered Tractor which were seized by the respondent in Crime No.427 of 2024.

2.The brief facts of the case:

The revision petitioner is the sole accused in the case registered in Crime No.427 of 2024 by the respondent police alleging that on 28.07.2024 at about 6.00 a.m. the petitioner used the tractor and trailer to transport of Savudu sand without any permission and thereby the petitioner committed the offences under Section 303(2) of BNS and under Section 21(1) of Mines and Minerals Development and Regulation Act, 1957. The petitioner is the owner of the said vehicle. The petitioner was released on bail. Thereafter, the petitioner filed the petition in Cr.M.P.No.427 of 2024 before the Judicial Magistrate Court, Melur for return of property. The petition was resisted by the respondent police. After hearing both sides, the learned Judicial Magistrate, Melur



dismissed the petition on 30.09.2024. Being aggrieved by the order, the petitioner preferred this Criminal Revision Case.

3. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the records in this Criminal Revision Case.

4. The learned counsel appearing for the revision petitioner has submitted that the vehicle was seized by the respondent police and the same is kept with the respondent police in open place thereby it will be ruined due to sunlight, rain, air and natural calamities. The petitioner's vehicle was not used for the alleged offence and false case has been registered against the petitioner. The petitioner purchased the tractor and trailer from one Balakrishnan in the year 2020, but the name has not been transferred. The said Balakrishnan died on 13.09.2021 leaving the second respondent as wife and minor children. The mother of Balakrishnan already died. The second respondent, who is the wife of the said Balakrishnan, gave a statement disclosing the ownership before a Notary public. The petitioner has no previous case. The petitioner is ready to give an undertaking and to deposit any amount.



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5. The learned Government Advocate (Crl.side) for the first respondent submitted that the petitioner illegally transported Savudu sand in his vehicle without any permission and hence the case was registered. If the vehicle is returned the petitioner would continue the offence of this similar nature. Moreover, so far confiscation proceeding has not been initiated.

6. On hearing both sides, it is clear that the petitioner is the sole accused in this case for the offence alleged that he illegally transported one unit of Savudu sand in his tractor bearing registration No.TN-50-T-2397 along with unnumbered trailer without any permission. The petitioner is on bail. The petitioner states that he purchased the vehicle from one Balakrishnan, who died, but the name has not been transferred. The petitioner has filed a notarized affidavit of wife of the said Balakrishnan, who is added as the second respondent. On perusal of the notarized affidavit, she has stated that the petitioner purchased the tractor bearing No.TN-50-T-2397 along with trailer from her husband for Rs.2,80,000/- and hence, she has no objection. There is no strong dispute by the first respondent also. So, it is clear that the petitioner is the owner of the vehicle. There is no dispute in it.



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7. The petitioner's vehicle was seized by the respondent police on 28.07.2024 and remanded in RPR.No.169 of 2024. The petitioner alleged that his vehicle is in open place without any protection and thereby his vehicle would get ruined by sun and rain. The Hon'ble Supreme Court issued guidelines in the **Sunderbhai Ambalal Desai case** reported in **2003 (1) CTC 175** in respect of return of seized properties by the police. Admittedly, the vehicle was seized on 28.07.2024 and the same was kept in the custody of the respondent for the past 5 months. The petitioner has no previous case. In the above circumstances, this Court is inclined to allow this Criminal Revision Case with conditions.

8. Accordingly, this Criminal Revision Case is allowed and the order, dated 30.09.2024 passed in Cr.M.P.No.343 of 2024 by the learned Judicial Magistrate, Melur, is set aside. The vehicle in question namely Tractor bearing registration No.TN-50-T-2397 with unnumbered Trailor is ordered to be returned to the petitioner on interim custody subject to the confiscation proceedings to be taken by the concerned department or by the Court on the following conditions:

- (i) The petitioner is directed to deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as



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non-refundable deposit for the said vehicle to the credit of the District Mineral Foundation Trust, Madurai District;

(ii) The petitioner shall execute a bond for a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) with two sureties each for a alike sum to the satisfaction of the learned Judicial Magistrate, Melur;

(iii) The vehicle shall be photographed in different angle and the engine and chassis number shall also be photographed in the presence of the Head Clerk of the learned Judicial Maistrate, Melur at the cost of the petitioner and the petitioner's signature to be obtained in the backside of the photographs and the said photographs and CD shall be kept in the case bundle for the purpose of marking them as material objects during trial;

(iv) The petitioner shall register the vehicle in his name by producing the same before the concerned registering authority and shall deposit the original Registration Certificate of the vehicle before the learned Judicial Magistrate, Melur and the said process shall be completed within a period of one month from the date of release of the vehicle.



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(v) The petitioner shall produce the vehicle in question as and when required by the courts below or by the respondent police;

(vi) The petitioner shall co-operate with the trial court for disposal of the case and also to complete the confiscation proceedings, if any taken.

10.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Judicial Magistrate, Melur,
Madurai District
- 2.The Sub Inspector of Police,
Melur Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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10.12.2024