



Crl.R.C.(MD)No.1268 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.02.2024

Pronounced on : 28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.(MD)No.1268 of 2023

and

Crl.M.P.(MD) No.16147 of 2023

Swaheerali

.. Petitioner

Vs.

The State rep. by
The Inspector of Police,
Kollencode Police Station,
Nagercoil, Kanyakumari District.
Crime No.89 of 2023

... Respondent

PRAYER : Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the impugned order, dated 30.10.2023 passed by the learned Principal Sessions Judge, Kanyakumari District at Nagercoil made in Cr.M.P.No. 5155 of 2023 and consequently, direct the respondent herein to release the vehicle bearing Registration No.KL-85-B-3957 (Tipper Lorry) to the petitioner.



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For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.A.Thiruvadi Kumar,

Additional Public Prosecutor

ORDER

With the consent of both Mr.S.C.Herold Singh, learned counsel appearing for the petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing on behalf of the State, the present Criminal Revision Petition has been taken up for final disposal at the admission stage itself.

2. The learned counsel for the petitioner would submit that the petitioner is the owner of the alleged vehicle which is a TATA Tipper Lorry bearing Registration No.KL-85-B-3957 and the said vehicle was involved in transportation of red sand without any valid permit and hence, a case was registered in Crime No.89 of 2023 for the offences punishable under Sections 379 of IPC and 21(i) of Mines and Minerals (D & R) Act, 1957 and thereafter, the said vehicle was seized and produced before the concerned Jurisdictional Magistrate and the



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same is being in the custody of the Court in RPR No.137 of 2023.

Thereafter, the petitioner had filed a petition in Cr.M.P.No.5155 of 2023 before the Court below seeking return of the vehicle and the same was dismissed. Challenging the same, the present Criminal Revision is filed.

3. The learned Additional Public Prosecutor would submit that if the custody vehicle is handed over to the petitioner, the vehicle might be utilized for the similar purpose in future.

4. It is the contention of the learned Additional Public Prosecutor is that in view of the order dated **29.01.2024** passed by this Court *in Crl.O.P.No.646 of 2024 in Annadurai Vs. The Inspector of Police, Kurisilapet Police station, Thirupathur District*, the present case has to be remanded back to the concerned Judicial Magistrate for deciding the matter. The relevant portion of the order is extracted hereunder :

“30.In view of the aforesaid discussion, the legal



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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;

(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



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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.”



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5. Considering the facts and circumstances of the case and also in the light of the order passed by this Court in Crl.O.P.No.646 of 2024 dated 29.01.2024 as stated supra, without going into the merits of the case, this Court disposes the present Criminal Revision Petition and the matter is remitted back to the concerned Jurisdictional Magistrate, with a direction to the learned Judicial Magistrate, to consider the matter after hearing the petitioner and pass appropriate orders on its own merits and in accordance with law, as expeditiously as possible, preferably, within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

28.03.2024

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

PKN



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Copy to

1. Principal Sessions Court, Nagercoil.

To

1. The Inspector of Police,
Kollencode Police Station,
Nagercoil, Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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VIVEK KUMAR SINGH, J.

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