



Crl.R.C(MD)No.1190 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.11.2024

Pronounced on : 03.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1190 of 2024

Gopinath

... Petitioner

Vs.

The State of Tamil Nadu rep. by
The Inspector of Police,
Velayuthampalayam Police Station,
Karur District.
(Crime No.428 of 2023)

... Respondent

PRAYER : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for the records and set aside the order passed in Cr.M.P.No.1961 of 2023 by the Principal District and Sessions Judge, Karur, dated 05.12.2023 and order interim custody of the Ashok Leyland Tipper Lorry bearing Registration No.TN-28-BJ-1720 seized by the respondent in connection with Crime No.428 of 2023.

For Petitioner : Mr.T.Leninkumar

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



ORDER

This Criminal Revision Case is filed to set aside the order, dated 05.12.2023 passed in Crl.M.P.No.1961 of 2023 on the file of the Principal Sessions Court, Karur, dismissing the petition filed by the petitioner U/s.451 of Cr.P.C. for return of property i.e., Tipper Lorry which was seized by the respondent in Crime No.428 of 2023.

2.The brief facts of the case:

The revision petitioner is the owner of the Tipper lorry bearing registration number TN-28-BJ-1720. He is arrayed as an accused in this case registered in Crime No.428 of 2023 by the respondent police. It is alleged that on 21.09.2023 his vehicle was used for illegal transport of four unit of river sand without any valid permit and the same was seized by the respondent police and case was registered for the alleged offences under Section 379 of IPC r/w Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957. The seized vehicle is kept with respondent police in open place thereby it will be ruined due to sunlight, rain and 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 needs the vehicle for his daily avocation. Therefore, the petitioner filed petition in Crl.M.P.No.1961 of 2023 before



the Principal Sessions Court, Karur, for return of property. The petition was resisted by the respondent police. After hearing both side, the learned Principal District and Sessions Judge, Karur, dismissed the petition on 05.12.2023. 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 respondent and perused the records in this Criminal Revision Case

4. The learned counsel appearing for the revision petitioner has submitted that the petitioner is the owner of the Tipper Lorry bearing registration number TN-28-BJ-1720. Though the Principal District Court has no jurisdiction to entertain the petition, it failed to appreciate the provision of section 451 of Cr.P.C. The petitioner cannot be deprived of the right of property. The petitioner's vehicle was kept idle in open place for the past one year and the vehicle will get ruined by sunlight and rain and it would lose its value. The petitioner has no previous case. Therefore, the impugned order may be set aside and the concerned Judicial Magistrate may be directed to return the vehicle to the petitioner on interim custody.



5. The learned Government Advocate (Crl.side) for the respondent submitted that the petitioner's vehicle was used for illegal transportation of four units of river sand without any permission and hence the case was registered. If the vehicle is returned, the petitioner would continue the offence of similar nature. Moreover, so far no confiscation proceeding was initiated and RC was not transferred in the name of the petitioner. Therefore, he strongly opposed this petition.

6. On hearing both, it is clear that the petitioner is an accused in this case for the offence alleged that the petitioner's vehicle Tipper Lorry bearing registration number TN-28-BJ-1720 was used for illegal transportation of river sand without any permission. The petitioner is the owner of the vehicle. The petitioner stated that he purchased the vehicle from one Sridhar and filed Form No.29 and No.30, there is no dispute in it. The petitioner's vehicle was seized by the respondent police on 21.09.2023. The petitioner alleged that his vehicle is in open place for the past one year 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.



7. It is the contention of the learned Government Advocate (Crl.side) 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 jurisdictional Judicial Magistrate for deciding the matter. The relevant portion of the order is 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;

(c)The Special Court constituted under Section 30B 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



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CrI.R.C(MD)No.1190 of 2024



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 331and 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;**"*

8. In view of the above decision of the learned Single Judge of this Court, the Special Court under MMDR Act constituted for speedy trial of the case cannot directly take cognizance of the offences in the 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 the case under MMDR Act and to pass an order under Section 451 Cr.P.C. until committal order is passed.



Crl.R.C(MD)No.1190 of 2024

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9. 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 Case 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 one month from the date of receipt of a copy of this order.

03.01.2025

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

To

- 1.The Principal District and Sessions Judge,
Karur.
- 2.The Inspector of Police,
Velayuthampalayam Police Station,
Karur District.
(Crime No.428 of 2023)
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C(MD)No.1190 of 2024

P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.R.C(MD)No.1190 of 2024

03.01.2025