



Crl.R.C(MD)No.1352 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **02.01.2025**

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THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1352 of 2024

Gomathi

... Petitioner

Vs.

The State of Tamil Nadu represented by,
The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District
(Crime No.221 of 2024)

... Respondent

Prayer : Criminal Revision Case has been filed under Section 438 read with Section 442 of BNSS, to call for the records pertaining to the order dated 08.11.2024 made in Crl.M.P.No.4492 of 2024 on the file of the Judicial Magistrate Court – I, Srivaikundam and set aside the same, and direct the respondent herein to grant the interim custody of the vehicle viz. Trailer attached with Tractor bearing registration No.TN-72-BC-7629, which has been seized by the respondent herein in Crime No.221 of 2024.

For Petitioner : Mr.V.M.Jegadeesha Pandian

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor



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ORDER

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This Criminal Revision Case is filed to set aside the order dated 08.11.2024 made in Crl.M.P.No.4492 of 2024 on the file of the learned Judicial Magistrate Court – I, Srivaikundam rejecting the interim custody of the trailer, and to direct the respondent to grant interim custody of the trailer which was attached with Tractor bearing registration No.TN-72-BC-7629, which was seized by the respondent in Crime No.221 of 2024.

2. The case of the prosecution is that on 19.08.2024 at about 09.30 a.m., the police parties intercepted 18 tractors near Sivaramamangalam. Each tractor was loaded and transported with one unit of alluvial sand without any permission or license. Hence, these vehicles were seized, and a First Information Report also came to be registered for the offence under Section 21(1) of Mines & Minerals (Development & Regulation) Act, 1957, in Crime No.221 of 2024, by the respondent police.

3. It is not in dispute that the petitioner, who is the owner of the tractor bearing registration No.TN-72-BC-7629, has filed a petition in Crl.M.P.No.3502 of 2024 before the learned Judicial Magistrate No.I, Srivaikundam for return of tractor, and the learned Magistrate, after considering the submission on either side, allowed the petition and granted



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interim custody of the tractor to the petitioner on certain conditions. After getting the tractor on interim custody, the petitioner has filed a petition under Section 497 of BNSS seeking interim custody of the trailer, in Crl.M.P.No.4492 of 2024, before the learned Judicial Magistrate No.I, Srivaikundam. After considering the arguments on either side and considering the absence of some explanation on the side of the petitioner, the learned Magistrate dismissed the said petition. Being aggrieved by the said order of dismissal for trailer, the petitioner preferred the present criminal revision case.

4. Heard the arguments on either side, and perused the materials available on record.

5. The learned counsel appearing for the revision petitioner has submitted that the trial court 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 from the date of seizure on 19.08.2024 i.e. for the past four months, and the trailer will get ruined by sun light and rain, and it would lose its value. The trial Court has not considered the settled decision of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai Vs. State of Gujarat [2002 (10) SCC 283]***.



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The petitioner is ready to give undertaking and to deposit any amount to show his bonafide. The petitioner suffers his earning, because of seizure of his trailer. Hence, the impugned order of dismissal may be set aside and the trailer may be ordered to be returned to the petitioner.

6. The learned Additional Public Prosecutor appearing for the respondent submitted that at the time of occurrence both the tractor and trailer were used illegally to transport 1 unit of alluvial sand. The investigating agency found out the owner of the tractor. The petitioner did not produce any valid documents to show his ownership and registration certificate in respect of trailer. The trial court has rightly dismissed the petition, since the petitioner failed to produce records regarding ownership and registration certificate. If the vehicle is returned, the petitioner would continue the offence of similar nature. Therefore, he strongly opposed this petition.

7. On hearing both the sides, it is clear that the petitioner is not an accused in this case. His Tractor bearing registration No.TN-72-BC-7629 with trailer were seized by the respondent police on the allegation that they were used for illegal loading of one unit of alluvial sand by the accused persons without any permission or license. The case was registered



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only under Section 21(1) of MMDR Act. On perusal, it is seen that the petitioner has initially filed a petition seeking interim custody of the tractor before the trial court. Only after having obtained the relief of interim custody of the tractor, the petitioner filed the petition seeking interim custody of the trailer.

8. The trial court held that the petitioner has not explained about the registration number of the trailer and as to why the trailer has not been registered yet. But to prove his ownership, the petitioner has already produced a bill memo obtained from M.S.Guru Welding Works. The petitioner says that he is using the trailer only for agricultural purpose. There is no specific denial by the respondent as regards trailer. The respondent has not taken any plea that the trailer is not belonged to the petitioner. In this case, there is no material produced by the respondent police that confiscation proceedings has been initiated against the vehicle involved in this case, admittedly which was seized on 19.08.2024 and the same was kept in the custody of respondent for the past four months. In the above circumstances, this court is inclined to allow this criminal revision with conditions.



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9. In the result, the criminal revision petition is allowed and the dismissal order, dated 08.11.2024, in Crl.M.P.No.4492 of 2024 on the file of the learned Judicial Magistrate No.I, Srivaikundam is set aside and the vehicle in question in this case (i.e) Trailer 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 shall deposit a sum of **Rs.5,000/- (Rupees Five Thousand only)** before the District Mineral Foundation Trust, Thoothukudi District as Non-refundable deposit.

(ii) on such deposit, the petitioner shall execute a bond for Rs.1,00,000/- (Rupees One Lakh only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Srivaikundam.

(iii) the petitioner shall file an affidavit with specific undertaking that the vehicle will not be used in any illegal mining or any other offence.

(iv) the petitioner shall not alienate the vehicle till the disposal of the case.

(v) the petitioner shall submit photographs of the vehicle along with Compact Disc duly certified under section 65 B of Indian Evidence Act.



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(vi) the petitioner shall produce the vehicle before the Court as well as before the respondent police as and when required.

(vii) the petitioner shall co-operate to the investigation.

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

Note : Issue order copy on **03.01.2025**.

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To

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



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P.VADAMALAI, J.

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