



Crl.OP(MD)No.3929 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2026

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.3929 of 2025

Kabilraja,

... Petitioner

Vs.

The State of Tamilnadu,
Rep by the Inspector of Police,
Rajathani Police Station,
Theni District.

(Crime no.156/2024)

.... Respondent / complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, To call for the records relating to the order dt. 12.09.2024 in Crl RC No.24/2024 on the file of the Honble Principal Sessions Judge, Theni confirmed by the order dt.03.08.2024 in Crl MP No.3569/2024 on the file of the Learned Judicial Magistrate, Aundipatti, set aside the same as illegal and consequentially direct the Learned Judicial Magistrate, Aundipatti to return the vehicle bearing Reg.No.TN-57-BZ-3209 to the petitioner herein and thus render justice.

For Petitioner : Mr.J.Senthilkumaraiah

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor



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ORDER

Preface:

The jurisdiction of this Court under Section 482 ???.?., 1973, / Section 528 BNSS, 2023, is intended to prevent abuse of process and to secure the ends of justice. It is neither a substitute for statutory remedies nor a device to circumvent an express bar under the Code.

2. The present petition is filed seeking to call for the records and set aside (i) the order dated 12.09.2024 passed by the learned Principal Sessions Judge, Theni, in Crl.R.C.No.24 of 2024, confirming (ii) the order dated 03.08.2024 passed by the learned Judicial Magistrate, Aundipatti in Crl.M.P.No.3569 of 2024, by which interim custody of the seized vehicle viz., Mahindra Tractor bearing Reg.No.TN-57-BZ-3209 was declined.

Case of the prosecution:

3. The case of the prosecution is that on 09.07.2024 at about 05.00 a.m., during patrol, the accused persons were found to have excavated and illegally transported river sand using a JCB and other



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tractors, including the petitioner's tractor TN-57-BZ-3209, without any permit. On the above allegation, the respondent police registered Crime No. 156 of 2024 for offences under Section 303(2) of the Bharatiya Nyaya Sanhita, 2023 and Section 21(4) of the MMDR Act, 1957. The vehicle was seized and produced before the jurisdictional Court and remanded in R.P.R.No.109 of 2024.

Case of the petitioner:

4. The petitioner claims to be the owner of the tractor and states that it is used for personal and rental purposes and that his livelihood depends on the income derived therefrom. The petitioner moved the learned Judicial Magistrate, Aundipatti, seeking interim custody under Section 451 Cr.P.C., 1973, (stated as Section 497 BNSS in the Magistrate's order). The learned Magistrate dismissed the application on 03.08.2024 mainly on the reasoning that the vehicle was involved in the alleged offence relating to natural resources and that release may facilitate repetition of the offence.

5. Aggrieved, the petitioner preferred Crl.R.C.No.24 of 2024 before the learned Principal Sessions Judge, Theni. The Revisional



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Court, by order dated 12.09.2024, confirmed the dismissal, observing that the allegation pertains to illegal sand theft/transport and that there was no ground to interfere. The petitioner also admits that he had earlier filed Crl.O.P. (MD) No. 19523 of 2024 challenging the Revisional order and that the same was withdrawn on 12.11.2024.

Grounds urged in the present petition:

6. The petitioner contends that the Courts below failed to consider (i) his ownership and production of documents, (ii) deterioration of the vehicle by prolonged exposure, (iii) that he is not an accused and had no knowledge of the alleged occurrence, and (iv) settled principles that seized vehicles should not be kept idle and may be released on conditions.

Submissions:

7. The learned counsel for the petitioner submitted that the tractor has remained in custody for nearly a year, that refusal of interim custody results in undue hardship and deterioration, and that this Court may exercise inherent powers to secure the ends of



justice. Reliance was also sought to be placed on a decision of a learned Judge of this Court on a similar issue.

8. The learned Additional Public Prosecutor opposed the petition, contending that the present Crl.O.P. is in substance a second revision, which is barred by Section 397(3) Cr.P.C., 1973, (and the corresponding scheme under BNSS). It was argued that inherent powers cannot be used to bypass the express bar and reliance was placed on the decision in ***Dharampal and Others / Ramshri (smt) and Others***¹ reiterating that Section 482 cannot be utilised to exercise a power expressly barred by the Code. It was also submitted that the earlier Crl.O.P. filed by the petitioner having been withdrawn, the present proceeding is not maintainable.

9. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for consideration:

10. The point that arises for consideration is whether this Criminal Original Petition, seeking to set aside the concurrent orders

¹ (1993) 1 SCC 435



refusing interim custody, is maintainable in the teeth of the statutory bar against a second revision, and if not, what appropriate directions may be issued to balance the interest of justice regarding the custody/preservation of the vehicle?

Analysis:

11. The petitioner's application for interim custody was dismissed by the learned Magistrate, and the dismissal was tested in revision before the learned Sessions Court, which confirmed the order. The petitioner has thus already availed the revisional remedy provided by the Code.

12. Though the prayer is styled as one under Section 482 Cr.P.C., 1973, /Section 528 BNSS, 2023, the substance of the relief sought is to reopen and re-examine the correctness of the revisional order confirming the Magistrate's refusal of interim custody. In effect, the petitioner seeks a second round of revisional scrutiny, which is barred under Section 397(3) Cr.P.C., 1973.



13. The law is settled that inherent powers cannot be invoked to do what the Code expressly prohibits. The principle reiterated by the Hon'ble Supreme Court in the decision in ***Dharampal and Others / Ramshri (smt) and Others***², is that when a second revision is barred, the High Court cannot be invited to exercise Section 482 as a substitute for that barred remedy, save in the narrowest category of cases involving patent lack of jurisdiction, manifest abuse of process, or glaring miscarriage of justice.

14. In the present case, the petitioner's grievance essentially relates to the merits of the refusal of interim custody and the apprehension of repetition of the offence. These are matters within the domain of the Court dealing with property custody, to be addressed by imposing stringent conditions where warranted. This Court does not find the case to fall within the exceptional category warranting interference in inherent jurisdiction to bypass the statutory bar.

15. The maintainability objection raised by the prosecution is therefore sustained.

² (1993) 1 SCC 435



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16. At the same time, it is equally well recognised that seized vehicles, if kept idle for long periods in open yards, are prone to deterioration and loss of value. The criminal process should not become punitive by prolonged retention of property when conditions can sufficiently secure production and prevent misuse. The dismissal of the present Crl.O.P. on maintainability does not mean that the petitioner is left remediless regarding preservation of the vehicle. The proper course is to move the jurisdictional Court with an application appropriately framed for interim custody/release on stringent conditions, including safeguards against repetition and ensuring production whenever required.

17. In such applications, the Court concerned can adopt protective measures such as detailed photographs, panchnama, sureties/bond, undertaking not to alienate, and any other conditions (including a direction not to deploy the vehicle for sand quarrying/transport and to produce the vehicle on demand), depending on facts. The statutory bar against a second revision is not a mere technicality, it is a legislative command. Equally, preservation of seized property is an integral facet of fair procedure.



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The course adopted above maintains both by respecting the bar, while ensuring that the petitioner may seek appropriate relief before the competent Court with enforceable safeguards.

18. In the result, this Criminal Original Petition is disposed of with the following directions.

19. Liberty is granted to the petitioner to file an appropriate application before the learned Judicial Magistrate, Aundipatti /jurisdictional Court seeking interim custody/release of the vehicle, with a proposal of stringent conditions for ensuring production and preventing misuse.

20. If such an application is filed, the learned Judicial Magistrate shall consider the same expeditiously, preferably within two weeks from the date of filing, on its own merits and in accordance with law, and may impose such conditions as are necessary, including but not limited to:

i.) production of ownership/RC and other relevant documents;



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ii.) execution of bond with sureties to the satisfaction of the Court;

iii.) preparation of inventory and photographing/videographing the vehicle with identifying particulars;

iv.) undertaking not to alienate/encumber or materially alter the vehicle; and

v.) undertaking to produce the vehicle as and when required and not to use it for any unlawful sand excavation/transport.

02.01.2026

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

To

1.The Inspector of Police,
Thiruchuli Police Station,
Viruthunagar District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Sml

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