

HIGH COURT OF MADRAS**Date of Decision: March 1, 2024****CORAM: THE HONOURABLE MR. JUSTICE P. VADAMALAI**

Crl.R.C(MD)No.534 of 2023

Jagan ... Petitioner**Vs.****State rep. by Inspector of Police, K.V.Nallur Police Station, Tirunelveli District. (Crime No.333 of 2019) ... Respondent****Legislation:**

Sections 193, 397 and 401 of the Criminal Procedure Code (Cr.P.C.)

Section 379 of the Indian Penal Code (IPC)

Sections 21(4-A), 30-B, and 30-C of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act)

Section 193 of the Cr.P.C.

Subject: Criminal revision petition against the order of the Principal Sessions Court, Tirunelveli, dismissing a petition for the return of seized property (vehicles) in a case of illegal transportation of sand, under the provision of Section 451 of Cr.P.C.**Headnotes:**

Jurisdictional Error in Order by Principal Sessions Judge – Dismissal of petition for return of seized property (vehicles) under Section 451 of Cr.P.C. by Principal Sessions Judge held as jurisdictionally incorrect – Jurisdiction for such petitions lies with the Jurisdictional Magistrate under MMDR Act and relevant Supreme Court decisions – Application for release of vehicle should be made before the jurisdictional Magistrate, not Sessions Court [Para 7].

Ownership and Non-Involvement in Crime – Petitioner, owner of seized vehicles, not involved in the crime – Vehicles seized for illegal transportation of sand – Petitioner's argument centered on non-involvement and necessity of vehicles for livelihood [Paras 2, 4].

Protection of Seized Property and Legal Precedent – Concern about seized vehicles being exposed to damage due to natural elements – Reference to Sunderbhai Ambalal Desai case by petitioner's counsel for the protection of seized property rights [Para 4].

Opposition by Respondent and Seizure Justification – Respondent's contention that vehicles were seized for transporting sand illegally and might be used for similar offences in future – Opposition to the release of vehicles [Para 5].

Legal Principles Regarding Confiscation and Release of Property – Discussion of legal principles regarding the initiation of confiscation proceedings and release of property under Section 21(4-A) of MMDR Act – Reiteration that application for vehicle release lies with the Jurisdictional Magistrate [Para 6].

Decision – Impugned order by Principal Sessions Judge set aside – Petitioner granted liberty to file petition before Jurisdictional Judicial Magistrate for interim custody of the vehicle – Jurisdictional Magistrate directed to decide the petition within two months of filing [Para 7].

Referred Cases:

- Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62
- State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772
- Kanwar Pal Singh v. State of U.P., (2020) 14 SCC 331
- Jayant v. State of M.P., (2021) 2 SCC 670
- Muthu v District Collector (2018 SCC Online Mad 13985)
- S. Kumar v District Collector (2023) 3 MLJ (Cri) 536
- Ramar v. The State (Cr R.C MD 470 of 2023) dated 11.10.2023

ORDER

This Criminal Revision Case is filed to set aside the order dated 19.10.2022 passed in CrI.M.P.No.7959 of 2022 on the file of the learned Principal Sessions Judge, Tirunelveli and to direct the respondent to grant interim custody of the vehicle Tractor bearing registration No.TN 76 6239 and Trailer bearing registration No.TN 76 6240, which were seized by the respondent in Crime No.186 of 2022.

2.The brief facts of the case:

The revision petitioner is not arrayed as an accused in this case registered in Crime No.186 of 2022 by the respondent police. It is alleged that on 02.05.2022 the petitioner's Tractor bearing Registration No.TN 76 6239 and trailer bearing Registration No.TN 76 6240 were illegally used for transportation of one unit Savadu sand from Odai and the case was registered for the alleged offence under Section 379 of IPC. The same were seized by the respondent police. The petitioner is the owner of the said

vehicle. The vehicle was seized by the respondent police and the same is kept with respondent police station 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 needs the vehicle for his daily avocation. Thereafter, the petitioner filed the petition in CrI.M.P.No.7959 of 2022 before the learned Principal Sessions Judge, Tirunelveli for return of property. The petition was resisted by the respondent police. After hearing both, the learned Principal Sessions Judge, Tirunelveli dismissed the petition on 19.10.2022. Being aggrieved by the order, the petitioner preferred this Criminal Revision Case.

3. Heard both side 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 vehicle and he has not involved in this case. The trial Court failed to appreciate the provision of Section 451 of Cr.P.C. The petitioner cannot be deprived of the right of the property. The petitioner's vehicle is kept idle in open place for the past 1 ½ years and the vehicle will get ruined by sunlight and rain and it would lose its value. The petitioner has no previous case. The trial Court has not considered the decision of the Hon'ble Supreme Court held in **Sunderbhai Ambalal Desai** case. The petitioner is ready to give undertaking and ready to make deposit.

5. The learned Government Advocate (CrI.side) for the respondent submitted that the petitioner's vehicles were seized for illegal transportation of one unit Savadu sand from Odai without any permission and hence the case was registered. If the vehicles are returned, the petitioner would continue the offence of this similar nature. Therefore, he strongly opposed this petition.

6. On perusal of records, the vehicle was stated to be seized by the respondent police for illegal transportation of Savadu sand. After hearing the arguments of the counsel, the case was reserved for orders. On the date of the argument, the learned Government Advocate (Crl.side) placed reliance on the order passed by the learned Single Judge of this Court in the case of **Ramar Vs. The State (Crl.R.C(MD)No.470 of 2023, dated 11.10.2023**. Now, the another learned Single Judge of this Court in **Crl.O.P.Nos.646 of 2024 etc., dated 29.01.2024** has held as follows:

"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 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 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".*

7. In view of the above decision of the learned Single Judge of this Court, an application for release of vehicle will lie only before the Jurisdictional Magistrate. Therefore, the impugned orders passed by the learned Principal Sessions Judge, Tirunelveli lacks of jurisdiction to entertain petition under Section 451 of Cr.P.C. Therefore, this Court is inclined to set aside the impugned order passed by the learned Principal Sessions Judge, Tirunelveli in CrI.M.P.No.7959 of 2022 and to allow this criminal revision with the following directions:

(i) The impugned order, dated 19.10.2022 passed by the learned Principal Sessions Judge, Tirunelveli in CrI.M.P.No.7959 of 2022 is hereby set aside;

(ii) The petitioner is hereby granted liberty to file appropriate petition before the Jurisdictional Judicial Magistrate Court and the learned Jurisdictional Judicial Magistrate is hereby directed to decide the petition, if so filed, for interim custody of the vehicle in accordance with law within two months from the date of filing of such petition.

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