

IN THE COURT OF THE DISTRICT JUDGE, KARUR
PRESENT:-THIRU R. SHANMUGASUNDARAM B.Com., L.L.B,
DISTRICT JUDGE.

Tuesday, the 24th day of January 2023

Crl.M.P.No.910/2022

[CNR.No.TNKR-01-001555-2022]

Kalairaja

...Petitioner/Owner of the property

vs.

The State represented by
The Inspector of Police,
Kulithalai P.S.,
Cr.No.717/2021

...Respondents/Complainant

This petition coming before me for final hearing on 18.08.2022 in the presence of Thiru S. Kalidas, advocate for the petitioner and Thiru N. Senthilkumar, Public Prosecutor, advocate for the respondent and upon hearing the arguments on the both side and having stood over for consideration till this day, this Court passed the following

ORDER:-

The petitioner/respondent has filed this petition u/s.451 of Cr.P.C., seeking return of RC Book for interim custody

2) This Court by its order dated 26.04.2022 has ordered to return the original RC book of Ashok Leyland Tusker 6X2 Yellow Truck bearing registration No.TN 45 AY 4518 to the petitioner subject to the execution of undertaking affidavit that he would return the RC book soon after the renewal of the lorry concerned on or before 01.06.2022. However, the petitioner failed to produce the RC book within the above said date. Therefore, this Court issued show cause notice dated 10.08.2022 to the petitioner. On 16.08.2022, the postal cover left without instruction and the petitioner failed to appear and give sufficient cause for non-production of the RC book to the

Court as per the condition dated 20.09.2021.

3) The respondent/police have registered a case in crime No.717/2021 u/s. 379 of IPC 21(1) of Mines and Minerals (Development and Regulation) Act 1957 and ceased the vehicle bearing registration No.TN 45 AY 4518. Thereafter, the petitioner has filed the petition u/s.451 of Cr.P.C., to pass an order to return the above said vehicle on interim custody to him . This Court by its order in Crl.M.P.No.1883/2021 dated 25.11.2021 has handed over the interim custody of the vehicle to the petitioner on following conditions that he is directed to surrender the original R.C. Book and also to deposit a sum of Rs.1,00,000/- before this Court in crime No.717/2021 of Kulithalai Police Station and in compliance of the condition, the above vehicle which was remanded in R.P.52/2021 of learned Judicial Magistrate No.II., Kulithalai shall be returned to the petitioner on interim custody and further, he shall execute a bond for the value of the vehicle to the satisfaction of the learned Judicial Magistrate No.II., Kulithalai and he shall file an undertaking affidavit that the vehicle will not be used in similar type of offence in future, and he should not alter the nature and character of the vehicle and he should not encumber or alienate the same without prior permission of the Court. Further, he should produce the vehicle as and when required by this Court. Subsequently, the petitioner has filed this present petition seeking to return the RC book and accordingly, this Court by its order dated 26.04.2022 has ordered to return the RC book of the Ashok Leyland Tusker 6X2 Yellow Truck bearing registration No.TN 45 AY 4518 to the petitioner subject to the execution of undertaking affidavit that he would return the RC book soon after the renewal of the lorry concerned on or before 01.06.2022.

4) This Court is a designated Special Court constituted to deal with the offences in contravenes of the Provisions of the Mines and Minerals (Development and Regulation) Act 1957, as per the direction issued by the Honourable Madras High Court in W.P.(MD) No.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018 and

as per the Government Order in G.O.Ms.No.298, Home (Courts-II) Department, dated 13.06.2019. Further, the Honourable Madras High Court in Review Application (MD) Nos.80 to 82 of 2019 dated 09.09.2019 directed that the designated Special Court to try the offence on the private complaint filed by the competent authority. As far as this case is concerned, no private complaint is lodged by the competent authority before this Court from the date of the FIR to till this date.

5) Section 21(4-A) of the Mines and Minerals Act is contemplated for the confiscation of the vehicle. Further, as per the above said Provisions, the Special Court alone is competent to pass the confiscation order.

6) The power of the Designated Court to confiscate the vehicles involved in contravenes of the Provisions of the Mines and Minerals (Development and Regulation) Act 1957 has been held by the Honourable High Court of Madras in the above Review Application (MD) Nos.80 to 82 of 2019 dated 09.09.2019 as follows:

“ As per these provisions, the power of seizure is certainly available with the officer or authority empowered accordingly. Such a seizure would involve the actual mineral, machinery by way of tool and equipment, vehicle or such incidental materials. As per Section 21(4A) of the Mines and Minerals Act, such seized materials are liable to be confiscated by an order of Court competent to take cognizance of the offence under section 21(1) of the Mines and Minerals Act and the seized materials are to be disposed of in accordance with the directions of such Court. Taking note of the aforesaid provisions, we have held that what is permissible to the Revenue Officials, namely the officer authorized, is only the seizure and not confiscation or disposal of such materials. The said reasoning adopted, in our considered view, does not require any re-look, though we respectfully agree with the learned Advocate General that there is a factual error in coming to conclusion that insertion has taken place only by Act 10 of 2015 which is, in fact only an amendment. We may note that the Act does not specifically deal with the issue qua release. Once

we hold that the power of confiscation lies with the Court alone, the question quo release shall also be decided by it alone. We are dealing with a penal provision in a regulatory statute and therefore the word “shall” will have to be given the actual meaning. Thus, confiscation is the rule and release in the consequence of an adjudication. The question of release would arise only on the decision as to whether confiscation is required or not”.

Therefore, as per the above said dictum laid down by the Honourable High Court, the confiscation is the rule and release in the consequence, of an adjudication.

7) The competent authority has not taken any steps to lodge a private complaint or file a petition to confiscate vehicle before this Court as per the directions given by the Honourable Madras High Court in W.P.(MD) No.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018.

8) The respondent/police have seized the vehicle and produced the same before the committal Court. Therefore, the above said vehicle became the case property and is subjected for confiscation. In such circumstances, based on the petition and undertaking given by the petitioner, the above said vehicle was handed over to the petitioner as interim custody. Thereafter, the petitioner by this present application sought for the return of RC book. Accordingly, RC book was handed over to him. Now, the petitioner failed to return the same. Therefore, the petitioner has violated the condition imposed by this Court in the present petition dated 20.09.2021. Hence, the petitioner loses his right to have interim custody of the vehicle. Further, the petitioner who fails to comply with the condition of the Court is bound to return the vehicle since he has failed to return the RC book of Ashok Leyland Tusker 6X2 Yellow Truck bearing registration No.TN 45 AY 4518. Therefore, it is not safe to allow him to have the Ashok Leyland Tusker 6X2 Yellow Truck bearing registration No.TN 45 AY 4518 on interim custody. Therefore, it is just and necessary to pass an order to recall the interim custody of the Ashok Leyland Tusker 6X2 Yellow Truck

bearing registration No.TN 45 AY 4518 from the petitioner. Accordingly, it is ordered that the petitioner is directed to hand over the Ashok Leyland Tusker 6X2 Yellow Truck bearing registration No.TN 45 AY 4518. Accordingly, interim custody granted by this Court in Crl.M.P.No.1883/2020 is not extended and is recalled.

9) In consequence, the petitioner is directed to return and produce the Ashok Leyland Tusker 6X2 Yellow Truck bearing registration No.TN 45 AY 4518 to the learned Judicial Magistrate No.II, Kulithalai within 15 days from today. Call on 07.02.2023.

Dictated to the steno-typist, transcribed by him corrected and pronounced by me in open Court on this the 24th day of January 2023.

PRINCIPAL DISTRICT JUDGE,
KARUR.

Copy to
The petitioner through counsel,
The Judicial Magistrate No.II, Kulithalai.
Respondent through Public Prosecutor.