

**Before the Special Court under the Mines and Minerals (D & R) Act 1957,
Thanjavur**

(In the Court of Principal Sessions Judge, Thanjavur)

PRESENT: P. Mathusuthanan, B.A.,B.L.,
Principal Sessions Judge, Thanjavur.

Monday, the 11th day of July, 2022
(Thiruvalluvarandu 2053 Sri Subakiruthu Aandu Aani Thingal 27th day)

Cr.M.P.No.2965/2022
(CNR No.TNTJ010047432022)

Bharathi, aged 37/2022,
S/o. Gunasekaran,
No.16/1, Anna Nagar, Kakadappai,
Melakalakudi, Thanjavur Taluk,
Thanjavur District.

... Petitioner / A1 / Owner of the
Bullock Cart

versus

State rep.by the Inspector of Police,
Thanjavur Taluk P.S.
Cr.No.269/2022

... Respondent / Complainant

This Criminal Miscellaneous Petition came up before me for final hearing today (11.07.2022) in the presence of Mr.M.Vasudevan, Advocate appearing for the Petitioner and of Mr.S.Sathiamoorthy, Public Prosecutor for the Respondent and upon hearing arguments on both sides and upon perusing the case records and having stood over for consideration till this day, this court passed the following..

ORDER

1) This Criminal Miscellaneous Petition is filed by the Petitioner under sections 451 and 457 of Criminal Procedure Code praying to direct the respondent to produce bullock cart seized under the Mines and Minerals (Development & Regulation) Act 1957 before the Court of the Jurisdictional Magistrate and also to direct the Jurisdictional Magistrate to hand over the said bullock cart to the petitioner on interim custody till the disposal of the case in Crime No.269/2022 of Thanjavur Taluk Police Station.

2) The Learned Counsel appearing for the petitioner submitted that the petitioner's bullock cart was seized as though it was used for transportation of river sand illegally and the petitioner's bullock cart is in the custody of the respondent and if the said bullock cart is kept in the open place, it is going to be ruined and the petitioner is ready to obey any conditions imposed by this Court and thus, it is prayed to hand over the bullock cart to the petitioner on interim custody.

3) The Learned Public Prosecutor appearing for the respondent / State submitted that the petitioner's bullock cart was used for transportation of river sand illegally without any permission and licence and therefore, it was seized with river sand and a case has been registered and if the vehicle is released in favour of the petitioner, he may use it for the similar purpose and thus, it is pleaded to dismiss the petition.

- 4) Point for consideration in this Criminal Miscellaneous Petition is that

Whether this Criminal Miscellaneous Petition is to be allowed as prayed for?

5) **Point:** Heard both sides and perused the records. As per FIR, it reveals that a case has been registered by the respondent in Cr.No.269/2022 u/s 379 of IPC and 21(1) of the Mines and Minerals (Development & Regulation) Act, 1957 for commission of theft of each of 1/4 unit of river sand by using three bullock carts.

6) It is further revealed from FIR that (1) Bharathi, (2) Rajesh and (3) Kanagaraj have been arrayed as accused in the above said criminal case and the petitioner/A1 has been granted bail by this court in Cr.M.P.No.2153/2022 dated 30.04.2022 as seen from the bail order copy.

7) It is further seen from the FIR that the bullock carts have been seized by the respondent along with river sand. It is seen from the bail order copy and the counter filed on the side of the respondent that the petitioner has no previous case of similar nature of offences.

8) The petitioner has produced the copy of Aadhar Card towards his identity. The address mentioned in the petition is similar with the Aadhar Card. The respondent in the memo of objections, does not dispute the ownership of the petitioner over the petition mentioned bullock cart which is sought to be returned

pending disposal of the case. So, it is clear that the petitioner is the owner of the petition mentioned bullock cart. The issue as to whether the said bullock cart was used for illegal transportation of sand from river, should be decided only after getting evidence in the trial.

9) In respect of the interim custody of the offending vehicle seized under MMDR Act, there is no specific provision under MMDR Act. As per section 30(C) of 'MMDR Act' which says that the Code of Criminal Procedure, 1973 shall apply to the proceedings before the Special Court for the purpose of provisions of this Act. As such, this Court is invoking the section 457 of CrI.P.C. to look into this issue in question. Further, in view of the decision of the Apex Court held in a case of *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in AIR SC 2003 Page 638, this Court is inclined to allow this Petition and thus, the point is answered accordingly.

10) In the result, this Criminal Miscellaneous petition is allowed. The Inspector of Thanjavur Taluk Police Station is hereby directed to unload the river sand and hand over it to the RDO concerned and produce the bullock cart before the Court of the Jurisdictional Magistrate immediately. On production of the bullock cart, the Jurisdictional Magistrate is directed to hand over the said bullock cart to the petitioner / owner on interim custody after proper identification through the respondent and with documents till the disposal of the case in Crime No.269/2022 of

Thanjavur Taluk Police Station with the following conditions:-

- 1) The Petitioner is directed to pay a sum of Rs.5,000/- (Rupees Five Thousands only) which is non-refundable, to the credit of the Education Department, by means of **Demand Draft** to be drawn in any one of the Nationalized Banks in favour of “**The Chief Educational Officer, Thanjavur (Development Fund) - Account No.05350100020509**” of Bank of Baroda, Thanjavur, IFSC: BARB0TANJOR *payable* at Thanjavur and produce the original demand draft before the said office and obtain its proper acknowledgment receipt in his name with Crl.M.P.No., from the said office and produce the **receipt**, xerox copy of **Demand Draft** along with **memo** before Jurisdictional Magistrate.
- 2) The Petitioner shall execute a personal bond for a sum of Rs.25,000/- with two sureties each or the like sum to the satisfaction of the above said Jurisdictional Magistrate.
- 3) The petitioner shall take photograph of the bullock cart from all angles and produce the photographs and CD before the above said Magistrate's Court.
- 4) The petitioner shall not sell, change or alter the nature and colour or otherwise dispose of the bullock cart till the disposal of this case and

- 5) The Petitioner shall file an Affidavit before the said Magistrate's Court that
- i) he should not use the bullock cart for similar type of offences
 - ii) he should produce the said bullock cart before the Court as and when required;

This Order is dictated by me to the Stenographer Grade-I of this Court, directly typed by him in Computer, corrected and pronounced by me in open court, this the 11th day of July 2022.

Principal Sessions Judge,
Thanjavur

Copy to: The Judicial Magistrate No.II, Thanjavur (uploaded in the court website)
Copy to: The Inspector of Thanjavur Taluk P.S.(uploaded in the court website)
Copy to: The Chief Educational Officer, Thanjavur (sent thro' email)