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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 2.2.2022.

Delivered on : 23.3.2022.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Revision Case Nos.755, 793, 767, 774, 766, 786, 797, 775, 784,
782, 845, 1069, 791, 817, 831, 835, 820, 811, 856, 868, 816, 827, 893,
872, 958, 944, 945, 994, 1041, 1027, 1029, 1059, 1104, 1102, 1134 of
2021

and
Crl.R.C.No.1 of 2022

Crl.R.C.No.755/2021

Krishnamoorthy

Petitioner

vs.

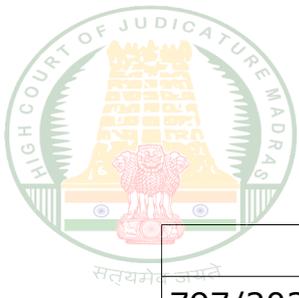
The State
rep. by Inspector of Police,
Keelaiyur Police Station,
Nagapattinam District.
(Crime No.559/2021)

Respondent

Criminal Revision Case filed under Section 397 and 401 CrI.P.C.
against the order dated 23.10.2021 passed in CrI.M.P.No.3218 of 2021 by
the District and Sessions Judge, Nagapattinam.

Appearance for respective petitioners:-

<i>Crl.R.C.No.</i>	<i>Name of the counsel</i>
755/2021	Ms.D.Geetha
793 & 767/2021	Mr.R.Kuyilan
774, 766 & 786 of 2021	Mr.M.Govindaraju



<i>Cr1.R.C.No.</i>	<i>Name of the counsel</i>
797/2021	Mr.M.Mariappan
775/2021	Mr.M.Ganesh
784, 782, 845, 1069, 791, 817, 831, 835, 820, 811, 1027, 1029/2021	Mr.P.Muthamizh Selvakumar
856, 868, 958 of 2021	Mr.A.Sundaravaradhanan
816/2021	Mr.V.Raja
827/2021	Mr.A.Saranraj
872/2021	Mr.S.Sarath Chandran
944/2021	Mr.B.Sundarapandiyan
945/2021	Mr.D.Gopinathan
994/2021	Mr.M.Vijayaragavan
1059, 1104 & 1102 of 2021	Mr.D.Sai Kumaran

For Respondents in all
the cases:

Mr.Hasan Mohamed Jinnah,
Public Prosecutor assisted by
Mr.S.Sugendran, G.A.(CrI. Side)
S.Udayakumar, G.A.(CrI. Side)

COMMON ORDER

The above Criminal Revision Cases have been filed by different petitioners challenging the orders passed by the court below at Nagapattinam rejecting the plea of the petitioners for return of vehicles, which are alleged to have involved in illegal sand mining, resultantly seized by the respondent police.



2. The cause of action for all the above Criminal Revision Cases arose at Nagapattinam District, where, on interception made by the authorities, the vehicles, which are sought to be released in the above cases were found involved in offences for having transported illegally quarried sand/savudu or caused damage to water bodies and thereupon, the respondent police had registered cases under Sections 379 IPC and Section 21(1) of the Mines and Minerals (Development & Regulation) Act, 1957, seized the vehicles in question and kept in the custody of the respondent police. The petitioners, having failed in their attempt to to get an order from the court below for return of vehicles, have approached this court.

3. The sum and substance of the submissions of the learned counsel appearing for the respective petitioners is that the petitioners are innocents and false cases have been foisted against them and the vehicles seized are left idle in open space exposed to all weather conditions and thereby the value of the vehicles gets diminished causing heavy monetary loss to the owners of the vehicles and sought for release of the vehicles.

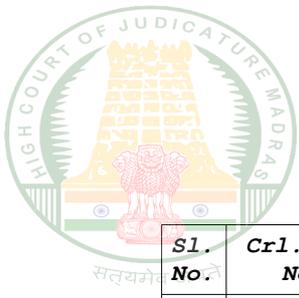
4. Per contra, learned Public Prosecutor would submit that the vehicles in question had been used for transportation of sand illegally and they had been duly seized by the respondent police and if the vehicles in all the cases have already been subjected to confiscation proceedings. He would submit



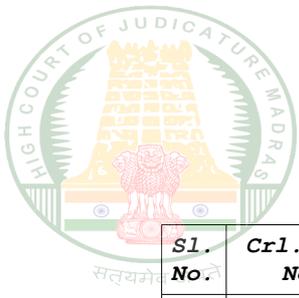
that as per Section 21(4) of the of the Mines and Minerals (Development & Regulation) Act, 1957, whenever any vehicle is involved in such illegal transportation, it is liable to be seized by an Officer authorized/specially empowered in this behalf and as per Section 21(4-A) of the Act, any mineral, tool equipment, vehicle or any other thing seized under sub-section (4) shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such Court and in such circumstances, it is the Special Court concerned, which can decide with regard to confiscation and disposal of the vehicles seized after initiation of confiscation proceedings. He would also submit that if the vehicles are returned at the moment, there is every probability of utilisation of the same for similar offences and thereby, he would vehemently oppose for return of the vehicles at this stage.

5. The relevant details about the proceedings with regard to seizure of the vehicles in question, as gathered from the learned Public Prosecutor, are extracted, in a tabular column, hereunder:-

<i>Sl. No.</i>	<i>Crl.R.C. No.</i>	<i>Name of the Petitioner</i>	<i>Crime Number</i>	<i>Police Station</i>	<i>Nature of vehicle</i>	<i>Vehicle No.</i>
1	755/2021	Krishnamoorthy	559/21	Keelaiyur	JCB	TN22AZ7737
2	793/2021	Jayaseelan/A1	768/21	Perambalur	JCB	KA06P2301
3	767/2021	Selvarani	769/21	Perambur	Tractor	TN51S6970



Sl. No.	Crl.R.C. No.	Name of the Petitioner	Crime Number	Police Station	Nature of vehicle	Vehicle No.
4	774/2021	Sathishkumar/A3	156/21	Vaitheeswarankovil	Tipper Lorry	TN28AA0155
5	766/2021	Gopinath/A2	237/21	Anaikaranchathiram	Taurus Lorry	TN70H7882
6	786/2021	Boopathi/A2	154/21	Vaitheeswarankovil	Taurus Lorry	TN28AA4642
7	797/2021	Arunkumar	1197/20	Kuthalam	Tipper Lorry	TN33AX6188
8	775/2021	J.Senthilkumar	355/20	Thiruvankadu	Tipper Lorry	TN63AB1224
9	784/2021	Prabhu/A2	240/21	Keevalur	Bullock Cart	
10	782/2022	Kumar/A1	240/21	Keevalur	Bullock Cart	
11	845/2021	Rengasamy	1176/20	Keevalur	Tractor	TN49AV8776
12	1069/2021	Ramesh/ Accused	1460/20	Keevalur	Tractor	TN76P5863
13	791/2021	Manimegalai/A4	173/21	Kariyapattianm	Tipper Lorry	TN19AD4770
14	817/2021	Veerasekar/A3	240/21	Keevalur	Bullock Cart	
15	831/2021	Vignesh/A7	240/21	Keevalur	Bullock Cart	
16	835/2021	Rajmohan/A4	240/21	Keevalur	Bullock Cart	
17	820/2021	Asaithambi/A5	240/21	Keevalur	Bullock Cart	
18	811/2021	Ramesh/A6	240/21	Keevalur	Bullock Cart	
19	856/2021	Gopalsamy/A2	605/20	Keevalur	Tractor with Tipper	TN50AA6640
20	868/2021	Karthikeyan	1415/20	Vedaranyam	Tractor with Tipper	TN51E9369
21	816/2021	Kathiresan/A1	191/21	Vedaranyam	Tipper Lorry	TN48U0352
22	827/2021	Vimalraj	303/21	Thittachery	JCB	TN51AF5302
23	893/2021	Ayyappan/A2	7/20	Nagore	Tractor with Tipper	New
24	872/2021	Mangayarkarasi	735/20	Thittachery	Jhon Deere Tractor	For Regn.
25	958/2021	Thara	1062/20	Vedaranyam	Taurus Lorry	TN19AE0499
26	944/2021	Meenakshi	545/21	Anaikaranchathiram	Tractor with Trailer	TN51M6516
27	945/2021	Rajasekar	634/21	Manalmedu	TVS XL	TN82F8539
28	994/2021	Ayyappan/Accused	351/21	Velankanni	Tractor with Tipper	TN51AD3696
29	1041/2021	Dineshkumar/ Accused	258/20	Poompuhar	Tractor with Tipper	TN82D9605
30	1027/2021	Panneerselvam/A2	442/21	Kariyapattinam	Mahindra Tractor with Tipper	TN51AL0702



Sl. No.	CrI.R.C. No.	Name of the Petitioner	Crime Number	Police Station	Nature of vehicle	Vehicle No.
31	1029/2021	Namasivayam/ Accused	417/21	Voimedu	Tractor with Tipper	TN51AP0783
32	1059/2021	Saravanan/A2	431/21	Voimedu	Tractor with Tipper	TN51AM5460
33	1104/2021	Mathiazhagan/ Accused	1290/20	Sirkazhi	Tipper Lorry	TN51K3884
34	1102/2021	Thennarasu	753/20	Poraiyar	Tipper Lorry	TN51F8223
35	1/2022	S.Senthil/Accused	1216/20	Sembanarkovil	Tipper Lorry	TN51K8258
36	1134/2021	D.Kanagarathinam	808/20	Keezhaiyur	Tipper Lorry	TN51A9207

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. The grievance expressed by the petitioners is that their vehicles are kept in open space exposed to sunlight and rain thereby the value of the vehicles gets diminished, as a result, they suffer a huge loss and they are ready to produce the vehicles before the authority as and when required.

8. No doubt, in several cases of similar nature, the courts used to release the vehicles involved in illegal mining of sand, of course, with stringent conditions. However, in these cases, the confiscation proceedings have been initiated. The relevant provisions regarding confiscation under the Act are extracted hereunder for ready reference:-

"21. Penalties -"

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful



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authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4-A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court."

9. As stated above, in all these cases, the proceedings regarding confiscation of vehicles have been initiated before the Court concerned. It is relevant to note that in spite of cases, it has become a never ending story that on one side, the owners of the vehicles are being given interim custody considering the grievance expressed by them and on the other side, the same vehicles are involved in similar offences time and again.

10. The times of yore need a wind-up and perception requires a change as everything that has a beginning has an ending. The mother earth is our heritage, which has been inherited by us from our past generations



without much damage and in fact with many developments, to enjoy all its treasures conserving all its goodness and not making any defacement under the guise of development, to be bestowed on our future generations.

Earth provides enough to satisfy every man's needs, but not every man's greed.-Mahatma Gandhi.

While the geologists proclaim that the age of the earth where we live now is 4.543 billion years, the ecologists expound that it is our responsibility to leave this planet in a better shape for the future generations than we found it, rather, to close our eyes on the cruelty being committed to our precious earth and take pride in our search for an alien planet with least infrastructure by spending huge money to survive afresh. In the present generation, the deterioration rate is at a new pace. We see perennial rivers that were once flowing with clean water are now converted into drainage channels to carry effluence.

11. In the year 1986 itself, the Apex Court, while dealing with a case of illegal mining on the Mussoorie Hills, a part of Himalayas, in ***Rural Litigation and Entitlement Kendra vs. State of U.P. (1986 (Supp) SCC 517***, has made a stress on the maintenance of environment and ecological balance by focusing on the conflict between development and conservation



and had observed as under:-

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"19. We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation."

20. Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in [Article 51A\(g\)](#) of the Constitution."

12. While dealing with an Appeal filed by the State of Madhya Pradesh against the order passed by the High Court releasing the vehicle, which involved in illegal excavation of sand from a restricted area of Chambal, the



Apex Court in ***State of M.P. v. Uday Singh ((2020) 12 SCC 733)***,

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showing much concern about the alarming depletion of natural environment, analysing the intention of the legislature to have the confiscation as an effective deterrence and also reminding of the fundamental duty of every citizen as contemplated under Article 51-A(g) of the Constitution of India, has held as under:-

"30. The Madhya Pradesh amendments to the Forest Act, 1927 are infused with a salutary public purpose. Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48-A of the Directive Principles and the fundamental duty of every citizen incorporated in Article 51-A(g). By isolating the confiscation of forest produce and the instruments utilised for the commission of an offence from criminal trials, the legislature intended to ensure that confiscation is an effective deterrent. The absence of effective deterrence was considered by the legislature to be a deficiency in the legal regime. The State Amendment has sought to overcome that deficiency by imposing stringent deterrents against activities which threaten the pristine existence of forests in Madhya Pradesh. As an effective tool



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for protecting and preserving environment, these provisions must receive a purposive interpretation. For, it is only when the interpretation of law keeps pace with the object of the legislature that the grave evils which pose a danger to our natural environment can be suppressed. The avarice of humankind through the ages has resulted in an alarming depletion of the natural environment. The consequences of climate change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment."

13. It is relevant here to quote Article 48-A of the Directive Principles of State Policy which reads as under:-

"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

14. Article 51-A(g) of the Constitution of India emphasizes that:-

*"It shall be the duty of every citizen of India to protect and improve the natural environment including forests, **lakes, rivers** and wildlife, and **to have compassion for living creatures.**"*



15. The Allahabad High Court, in a recent decision in **Akhilesh Kumar vs. State of U.P. and another (in Application No.20096 of 2021 dated 4.3.2022)**, dealt with a question as to whether pending confiscation proceedings, the Magistrate/Court has jurisdiction to release any property which is the subject matter of confiscation and by referring the decision of a Division Bench of the same Court, has held as under:-

"6. Now the question is whether during confiscation proceedings under section 72 of U.P. Excise Act, the Magistrate is empowered to release the vehicle. In case of (Nand vs. State of U.P.) 1997 (1) AWC 41 and (Rajeev Kumar Singh vs. State of U.P. and ors) 2017 (5) ADJ 351, the learned Single Judge of this Court held that the Magistrate has jurisdiction while in the case of Ved Prakash vs. State of U.P. 1982 AWC 167 another Bench of this Court held that the Magistrate has no jurisdiction in the matter. The matter again came before another learned Single Judge of this Court and taking notice of the conflicting views the learned Single Judge referred the matter to Division Bench. The Division Bench in (Virendra Gupta vs. State of U.P). 2019 (6) ADJ



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432 (DB), on the aforesaid reference formulated the following question:

"Whether pending confiscation proceedings under Section 72 of the U.P. Excise Act before the Collector, the Magistrate/ Court has jurisdiction to release any property subject-matter of confiscation proceedings in exercise of powers under Sections 451, 452 or 457 of the Code of Criminal Procedure?"

7. *The Division Bench interpreting the various provisions of Cr.P.C. and U.P. Excise Act and the law laid down by the Apex Court in **(Sunderbhai Ambalal Desai vs. State of Gujarat), 2002 (10) SCC 283** and **(State GNCJ of Delhi) vs. Narendra (2014) 13 SCC 100** answered the aforesaid question in para no.20 of the judgment which is reproduced as below:*

"In view of the foregoing discussion, we find that the case of Ved Prakash (supra) lays down the correct law on the subject-matter of this reference and neither Nand vs. State of U.P., 1997 (1) AWC 41 or Rajiv Kumar Singh vs. State of U.P. and others, 2017 (5) ADJ 351 nor Sunderbhai Ambalal Desai vs. State of Gujarat, 2002 (10) SCC 283, can be said to be authorities on the power of the Magistrate to release



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anything seized or detained in connection with an offence committed under the 'Act' in respect of which confiscation proceedings under Section 72 of the U.P. Excise Act are pending before the Collector."

8. *So the law has been settled by the Division Bench of this Court which has held that during confiscation proceeding, the Magistrate has no power under sections 451 or 457 Cr.P.C. to release the vehicle.*

9. *Learned counsel for the revisionist has placed reliance on the case of **Chandra Pal vs. State of U.P.** in Application U/s 482 Cr.P.C. No.1325 of 2021 decided on 21.02.2021 and **Murad Ali vs. State of U.P. and two ors** in Application U/s 482 Cr.P.C. No.21547 of 2021 decided on 23.11.2021. In the aforesaid case, the learned Single Judge has held that Magistrate has jurisdiction to release the vehicle during confiscation proceedings but in view of the law propounded by the Division Bench of Allahabad High Court this view cannot be adopted.*

10. *From the aforesaid discussion, it is clear that during confiscation proceedings, the Magistrate has no jurisdiction to release the vehicle seized under section 72*



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of U.P. Excise Act. The findings recorded by the learned Magistrate and upheld by the revisional court are according to law. There is no illegality or infirmity in the impugned order and the application U/s 482 Cr.P.C. is liable to be dismissed."

16. In the decision in ***State of M.P. v. Uday Singh ((2020) 12 SCC 733)*** cited supra, the Apex court has heavily come down against the anti-social elements that pose a danger to the natural environment and recognized the significance of confiscation proceedings as the effective deterrent measure to eradicate such hazards while dealing with the cases of illegal mining.

17. The Allahabad High Court, in ***Akhilesh Kumar vs. State of U.P. and another*** cited supra, when confronted with the conflicting decisions, clarified the issued based on the decision of a Division Bench of the same court and rendered a decision against release of the vehicle pending confiscation proceedings.

18. Once again coming to sub-section (4-A) of Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957, it emphasizes that any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to



take cognizance of the offence under sub-section (1) and shall be disposed

of in accordance with the directions of such court, which means that disposal of the seized vehicles shall be in accordance with the directions of such Court viz., the Special Court.

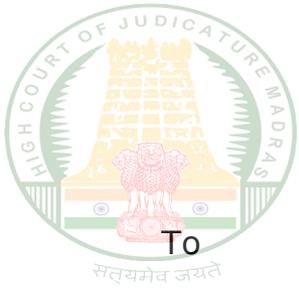
19. It is seen that in the instant cases, the data produced by the learned Public Prosecutor shows that in all the cases, confiscation proceedings had already been initiated. Therefore, this court is of the view that in the interest of justice, it would suffice if a direction is given for conclusion of the confiscation proceedings within a time frame. Accordingly, while rejecting the plea for the release of the vehicles in question, it is hereby ordered that the confiscation proceedings shall be concluded within a period of six months from the date of receipt of a copy of this order and the petitioners/owners of the vehicles shall co-operate for conclusion of the confiscation proceedings without protracting any longer.

20. All the above Criminal Revision Cases are disposed of with the above observation and direction.

23.3.2022.

Index: Yes.
Internet: Yes.
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Note to office:- Issue today.



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1. The District and Sessions Judge,
Nagapattinam.
2. The Public Prosecutor,
High Court, Madras.
3. Respondent police in each case
4. Individual copy to each petitioner



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A.D.JAGADISH CHANDIRA, J.

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P.D. ORDER IN
Crl. Revision Case No.755 of 2021
& batch

Delivered on
23.3.2022.