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CrI.O.P.Nos.3219, 3221 and 3223 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 23.03.2023	Orders pronounced on 25.04.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CrI.O.P.Nos.3219, 3221 and 3223 of 2023

CrI.O.P.No.3219 of 2023

Shanthi

... Petitioner

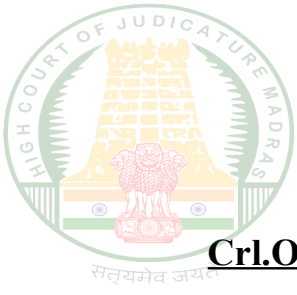
Vs.

The State by Inspector of Police
SIT, Chinnasalem
Kallakurichi District.
(Crime No.236 of 2022)

... Respondent

This Criminal Original Petition No.3219 of 2023 is filed under Section 482 Cr.P.C. to modify the conditions imposed in the order dated 07.11.2022 CrI.M.P.No.1520 of 2022 on the file of Judicial Magistrate No.II. Kallakurichi (FAC) Principal District Munsif, Kallakurichi as far as directing the petitioner to give undertaking affidavit that she will not dispute the property at the time of trial proceedings and not to alienate the property and to produce the vehicle whenever required by the court below is concerned.

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Crl.O.P.No.3221 of 2023

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Ravikumar

... Petitioner

Vs.

The State by Inspector of Police
SIT, Chinnasalem
Kallakurichi District.
(Crime No.236 of 2022)

... Respondent

This Criminal Original Petition No.3221 of 2023 is filed under Section 482 Cr.P.C. to modify the conditions imposed in the order dated 04.11.2022 in Crl.M.P.No.1518 of 2022 on the file of Judicial Magistrate No.II. Kallakurichi (FAC), Principal District Munsif, Kallakurichi as far as directing the petitioner to give undertaking affidavit that he will not dispute the property at the time of trial proceedings and not to alienate the property and to produce the vehicle whenever required by the court below is concerned.

Crl.O.P.No.3223 of 2023

Ravikumar

... Petitioner

Vs.

The State by Inspector of Police
SIT, Chinnasalem
Kallakurichi District.
(Crime No.236 of 2022)

... Respondent

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This Criminal Original Petition No.3223 of 2023 is filed under Section 482 Cr.P.C. to modify the conditions imposed in the order dated 04.11.2022 in Crl.M.P.No.1519 of 2022 on the file of Judicial Magistrate No.II. Kallakurichi (FAC), Principal District Munsif, Kallakurichi as far as directing the petitioner to give undertaking affidavit that he will not dispute the property at the time of trial proceedings and not to alienate the property and to produce the vehicle whenever required by the court below is concerned.

For Petitioner : Mr.R.Nalliyappan

in all Crl.O.Ps.

For Respondent : Mr.Leonard Arul Joseph Selvam
in all Crl.O.Ps. Government Advocate (Crl. Side)

COMMON ORDER

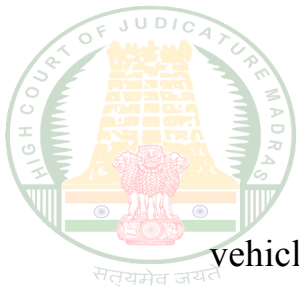
These petitions are filed to modify the conditions imposed in the order dated 07.11.2022 in Crl.M.P.No.1520 of 2022 and orders dated 04.11.2022 in Crl.M.P.No.1518 of 2022 and in Crl.M.P.No.1519 of 2022 respectively on the file of learned Judicial Magistrate No.II, Kallakurichi (FAC) Principal District Munsif, Kallakurichi as far as directing the petitioner concerned to give undertaking affidavit that she/he will not



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dispose the property at the time of trial proceedings, will not alienate the property and will produce the vehicles whenever required by the court.

2. Learned counsel for the petitioner(s) submitted that the petitioner is the correspondent of Sakthi Matriculation Higher Secondary School and ECR International School at Kaniyamoor, Chinnasalem Taluk, Kallakurichi District. Due to an riot caused by the accused persons in Crime No.236 of 2022 on 17.07.2022, school buildings and its belongings like buses, van, tractor and assets inside the school premises were vandalized, ransacked and destroyed and the case under Sections 147, 148, 294 (b), 323, 324, 332, 336, 353, 435, 436, 379, 506 (ii) IPC, Sections 3, 4 and 5 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 was registered. Burnt vehicles were seized by the respondent police and they were kept in the school premises for more than six months. All the vehicles stand in the name of the petitioner/Correspondent of the school. Original RC Books of the said vehicles were burnt in the incident. Due to the extent of damage caused, many of the vehicles will not be useful for any purpose and they would be taken only for scrap value. Some of the half burnt



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vehicles are also kept in the school premises and due to sunlight and rain, the vehicles get damaged day-by-day. Petitioner(s) filed applications in CrI.M.P.Nos.1518, 1519 and 1520 of 2022 to return the vehicles to the custody of the petitioner(s), enabling the petitioner(s) to sell the vehicles. The learned Judicial Magistrate, by separate orders dated 04.11.2022, 04.11.2022 and 07.11.2022 allowed the petitions with a condition that the petitioner(s) shall give an undertaking affidavit that he/she will not dispute the property, will not alienate the property and will produce the vehicles as and when required by the court. The vehicles are almost totally burnt. They are kept in open air, exposed to sun light, air and rain. The vehicles cannot be moved and therefore, they cannot be produced before the Court. The vehicles can be marked as Material Objects (M.Os.), with the use of photographs taken, Seizure Mahazar and Form-95. Therefore, these petitions are filed for altering/modifying the condition No.3 imposed in the order of the learned Judicial Magistrate No.II, Kallakurichi (FAC) Principal District Munsif, Kallakurichi in CrI.M.P.Nos.1518, 1519 and 1520 of 2022 dated 04.11.2022, 04.11.2022 and 07.11.2022.



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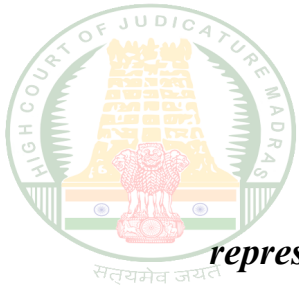
3. Learned counsel for the petitioner(s) relied on the following judgments in support of the proposition that it is not necessary to produce the vehicles before the Court during the trial in all the cases:-

(i) (2002) 10 Supreme Court Cases 283 (Sunderbhai Ambalal Desai ..vs.. State of Gujarat) – decided on 01.10.2002.

(ii) 2002 (10) SCC 290 : 2003 SCC (Cri.) 1440 (Sunderbhai Ambalal Desai ..vs.. State of Gujarat) - decided on 18.11.2002, wherein it is held as follows:-

“In our view, no further directions are required to be given in these matters. However, it is made clear that in case where accused dispute that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph. Further with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the Court and the Seizure Report may be sufficient. The Special Leave Petitions are disposed of, accordingly.”

(iii) 2011 (1) MWN (Cr.) 437 (Mad) (Sundaram Finance Ltd.,



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represented by its Branch Manager (Legal) P.Vijayakumar; S.Nanda Gopi

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..vs.. The State of Tamil Nadu), wherein it is observed as follows:-

“11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon'ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial,



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because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

12. This court expresses a sincere hope that atleast hereinafter the criminal courts would follow the decision of the Apex Court in [Sunderbhai Ambalal Desai v. State of Gujarat](#), in true letter and spirit.

13. These Criminal Original Petitions are allowed. The concerned Lower Court shall, upon production of the certified copy of this order, fix a date for production of the vehicle before it. Upon production, the lower court shall cause photographs of the vehicle to be taken and record Panchnama thereof. The petitioner shall then be at liberty to effect sale of the vehicle. The photographs and Panchnama prepared shall be read as evidence in lieu of marking of the vehicles.”



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WEB COPY (iv) 2012-1-LW (Crl.) 273 (Selvam & another .. vs.. State),

wherein it is held as follows:-

“13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the insurer. We also feel, it is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai, considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.



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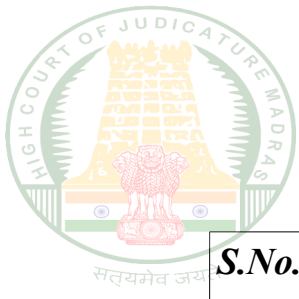


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(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed.”

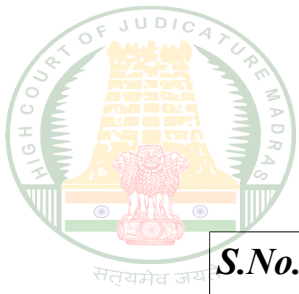
4. It is seen from the common status report filed by the Deputy Superintendent of Police, SIT, Kallakurichi that the property worth Rs.18,07,51,877/- was damaged. Videos and photographs covering the extensive arson, rioting and criminal activities committed by the protesters are collected through various sources including CCTV footage, media clippings, police photographers and other general public and witnesses to identify the perpetrators. Specific portions of the videos containing serious offences, like, setting things ablaze, damaging the properties, breaking down the gates and assault on police personnel etc., are being analyzed and identity of the accused is being fixed. Case properties were seized through Seizure Mahazar and were produced before the learned Judicial Magistrate No.II, Kallakurichi, through Form-95 as detailed below:-

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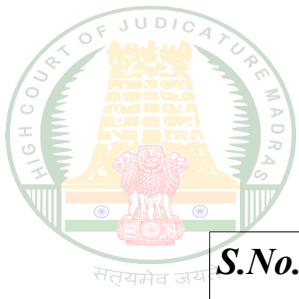
S.No.	Case properties	Bearing Registration Number	Crl.M.P.No. & Crime No.	C.P.No.
1	1)JCB 2)Two wheeler [Honda Activa] 3)Maruthi swift ZDI car	TN 15L 7575 TN 15R 7575 TN 15Q 0777	Cri.MP.No.1520/ 2022 Crime No. 236 of 2022	144 of 2022, 151/2022
2	1)Yamaha FZS Two wheeler 2)Four wheelers New Holland Tracktor, 3)unregistered tipper 4)unregistered water tank	TN 15P 0666 TN15X 2709	Cri.MP.No.1518/ 2022 Crime No. 236 of 2022	144, 146, 151/2022



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S.No.	Case properties	Bearing Registration Number	Crl.M.P.No. & Crime No.	C.P.No.
3	Number of Buses 17	1) TN 30 F 8662 2) TN 39 AX 2788 3) TN 29 U 1852 4) TN 54 B 5795 5) TN 33 AC 3939 6) TN 39 3994 7) TN 30 C 3399 8) TN 32 U 1467 9) TN 30 D 8963 10) TN 25 T 6320 11) TN 41 D 535 12) TN 25 Z 3537	Cri.MP.No.1519/ 2022, Crime No. 236 of 2022	146/2022 and 151/2022



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S.No.	Case properties	Bearing Registration Number	Crl.M.P.No. & Crime No.	C.P.No.
		13) TN 45 T 3803		
		14)TN 32 AU 6766		
		15)TN 32 AV 2666		
		16)TN 33 BA 1771		
		17)TN 15 & 2895		

Learned Judicial Magistrate visited the vehicles along with Motor Vehicle Inspector and inspected the vehicles and assigned C.P.Nos.144 of 2022, 146 of 2022 and 151 of 2022. The case is under investigation and therefore, it is objected to relax the condition.

5. Heard the rival submissions and perused the records.

6. In *Sunderbhai Ambalal Desai ..vs.. State of Gujarat reported*

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in (2022) 10 Supreme Court Cases 283 - decided on 01.10.2002 with

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regard to the custody of the vehicle, it was observed as follows:-

“Vehicles:

15. *Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.*

16. *However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.*



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17. *In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.*

18. *In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case,*



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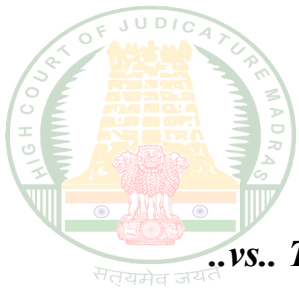
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before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

7. It is seen from this judgment that the if the vehicles are kept unattended in the police station it will become junk day-by-day. In case, if the vehicle is not claimed by the accused or owner or insurance company or by third party, then such vehicle may be ordered to be auctioned by the court. Even when the insurer or insurance company fails to take possession, the vehicles shall be sold as per the direction of the court. The only requirement is that before handing over the vehicle, appropriate photographs should be taken and a detailed panchanama should be prepared. Similar view is taken in the following judgments:-

(i) 2002 (10) SCC 290 : 2003 SCC (Cri.) 1440 (Sunderbhai Ambalal Desai ..vs.. State of Gujarat) - decided on 18.11.2002 ;

(ii) 2011 (1) MWN (Cr.) 437 (Mad) (Sundaram Finance Ltd., represented by its Branch Manager (Legal) P.Vijayakumar; S.Nanda Gopi



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..vs.. The State of Tamil Nadu);

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(iii) 2012-1-LW (Crl.) 273 (Selvam & another .. vs.. State)

8. From the consideration of these judgments, we can understand that if the vehicles are kept in open air exposed to sunlight and rain, they become junk day-by-day. In appropriate cases, the vehicles can also be sold. In the case before hand, the photographs filed with the petitions show that some vehicles had been half burnt and some vehicles had been totally burnt. It is not possible for moving these vehicles to the court for marking them as material objects. It is stated that the vehicles had been remanded to the court custody and given C.P.Nos.144 of 2022, 146 of 2022 and 151 of 2022 after taking necessary photographs and videos. Therefore, marking of the vehicles as material objects can be done with the help of Seizure Mahazar, Form-95 and photographs of the vehicles. No one is claiming ownership of these vehicles except the petitioner(s). If petitioner(s) is/are permitted to sell these half burnt and totally burnt vehicles, at least petitioner(s) shall be in a position to recover some portions of the cost of the properties damaged. In

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this view of the matter, this Court sets aside condition No.3 of the order dated 04.11.2022, 04.11.2022 and 07.11.2022 passed by the learned Judicial Magistrate No. Kallakurichi (FAC) Principal District Munsif, Kallakurichi, in Crl.M.P.Nos. 1518 of 2022, 1519 of 2022 and 1520 of 2022 and gives permission to the petitioner(s) to sell the vehicles. However, learned Magistrate is directed to ensure that the vehicles are photographed with necessary and detailed panchanama prepared and produced before the court for the purpose of marking as exhibits, during the course of trial. It must also be ensured that Motor Vehicle Inspector inspected all the vehicles and submitted his report with regard to the nature and extent of the damage caused to each and every vehicle.

9. With the above observations and directions, these Criminal Original Petitions are allowed.

25.04.2023

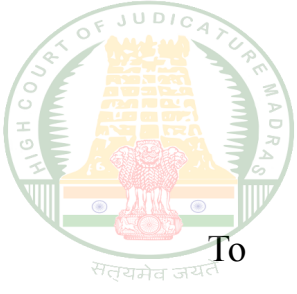
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Index :Yes

Internet:Yes

Speaking Order/Non-speaking Order

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To

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1. Judicial Magistrate No.II. Kallakurichi (FAC)
(Principal District Munsif, Kallakurichi).
2. The Inspector of Police
SIT, Chinnasalem
Kallakurichi District.
3. The Public Prosecutor,
Madras High Court,
Chennai.

G.CHANDRASEKHARAN,J.

mra

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**Common order in
Crl.O.P.Nos.3219, 3221 and
3223 of 2023**

25.04.2023

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