



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.379 of 2016

Sarbudeen

... Revision Petitioner/
Petitioner

-vs-

The State through the Sub Inspector of Police,
Earvadi Dharga Police Station,
Ramanathapuram District.
(Crime No.122 of 2015)

... Respondent/Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the impugned order passed by the learned Additional District and Sessions Judge, Special Court for E.C. And NDPS Act cases, Pudukkottai in CrI.M.P.No.1941 of 2015 in Crime No.122 of 2015 dated 16.02.2016.

For Petitioner: Mr.S.M.A.Jinnah

For Respondent: Mr.P.Kandasamy
Govt. Advocate (CrI.Side)

O R D E R

Aggrieved by the dismissal of his property return petition in Cr.M.P.No.1941 of 2015, by the Additional Sessions Judge, Special Court for E.C. and NDPS Act Cases, Pudukkottai, the petitioner has come forward with this revision.

2.Earvadi Dharga Police registered a case in Crime No.122 of 2015. In this connection a YAMAHA FAZER TN 65 L 0617 has been seized by the police. The revision petitioner is the registered owner of the vehicle. He filed CrI.M.P.No.1941 of 2015 under Section 451 Cr.P.C. and sought for interim custody of the property.

3.learned Special Judge passed the impugned order which runs as under:

"The learned Special Public Prosecutor argued that if the vehicle is released on bond it will be used for the same offence and investigation is not yet completed and he raised strong objections. The learned counsel for the



petitioner argued that the petitioner is the law abiding citizen, he will obey all the conditions imposed by this court, if the vehicle is not maintained properly it will be damaged, hence he prays to return the vehicle.

Considering the contentions raised by the Special Public Prosecutor, this petition is dismissed."

4.A reading of the said order would show non application of mind by the learned Special Judge. The learned Special Judge seems to have not understood the scope of Section 451 Cr.P.C. It is a clear case of disinclination to exercise jurisdiction. Every one knows the decision of the Hon'ble Supreme Court in **SUNDERBHAI AMBALAL DESAI Vs. STATE OF GUJARAT [2003 (1) CTC 175 (SC)]**. If the learned Special Judge knows the same, the learned Judge ought not to have passed such an order. In three connected property return petitions the learned Judge mechanically passed such orders.

5.What is important is that the property viz., YAMAHA FAZER TN 65 L 0617 has to be preserved. Otherwise it will be exposed to open sky and it will become scrap value. Some times miscreants may steal its parts.

6.In the circumstances, ordered as under:

- i. This criminal revision is allowed.
- ii. The impugned order, dated 16.04.2016, passed in Cr.M.P.No.1941 of 2015, by the learned Additional Sessions Judge, Special Court for E.C. & NDPS Act, Pudukkottai, is set aside.
- iii. The said Judge, will give interim custody of the property viz. YAMAHA FAZER TN 65 L 0617 to the revision petitioner.
- iv. The revision petitioner will execute a personal bond for Rs.1,00,000/- (Rupees One Lakh only) to the satisfaction of the said Judge.
- v. The property shall be photographed and it shall be kept in the case records.
- vi. As and when so directed the vehicle shall be produced before the said Court.
- vii. Till final property order is passed, the revision petitioner shall not dispose of or disfigure the vehicle.
- Viii. He can carry out the minor repairs but to effect major repair, he should get permission of the trial Court.

Sd/-

Assistant Registrar(CS-II)

/True copy/



To:

1.The Additional Sessions Judge, Special Court for E.C.
and NDPS Act Cases, Pudukottai.

2.The Government Advocate (Criminal Side)
Madurai Bench of Madras High Court, Madurai.

3.The Inspector of Police,
Earvadi Dharga Police Station,
Ramanathapuram District.

SJ

CSL/DB/SAR-II/21.06.2016 : 2P/4C

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