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Crl.R.C.No.161 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.02.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.161 of 2023

Arumugam ... Petitioner

Vs.

State rep.by

The Inspector of Police,
Thiruvannamalai Police Station,
Thiruvannamalai District

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 & 401 of the Criminal Procedure Code, 1973 to set aside the order in C.M.P.No.117 of 2022 against C.C.No.6 of 2022 passed by the Special Judge for EC/NDPS Act Cases, Salem, dated 10.3.2022 and to allow the present Criminal Revision.

For Petitioner : Mr.G. Munuraj

For Respondent : Mr.V.Meganathan
Government Advocate (Crl.side)



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ORDER

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This Criminal Revision Case has been filed challenging the order of dismissal dated 10.03.2022 passed by the Special Judge for EC/NDPS Act Cases, Salem in C.M.P.No.117 of 2022 filed under section 451 of Cr.P.C., seeking interim custody of the Auto Rikshaw bearing Regn.No.TN-25 BD-7785.

2.The learned counsel for the petitioner contended that the petitioner is the owner of the vehicle and he is not an accused in this case and the vehicle also not involved in similar type of any cases. The accused rented the Auto of this petitioner and he has no knowledge about the contraband seized from the accused person. In such circumstances, he seeks to grant interim custody of the vehicle to the petitioner.

3.Further, the learned counsel for the petitioner submitted that no purpose will be served in keeping the vehicle under the custody of respondent police and if the vehicle is kept for a long time in the open



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space, it would cause damage to the vehicle. The petitioner is ready to give appropriate guarantee as well as security for return of vehicle and also he will produce the vehicle, as and when required either before the respondent police or before the Trial Court. Hence, he prayed to return the Auto and he is ready to obey any condition imposed on him by this Court.

4.The learned Government Advocate (Crl.side) for the respondent filed a counter and objected to return the Auto to the petitioner and submitted that there is no previous case against this petitioner and the vehicle is not involved in the similar type of case previously. There is no antecedent in this regard against this petitioner.

5.I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondent.

6.On perusal of the records, the fact reveals that on 04.10.2022 at



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about 15.30 hours, the respondent police, on receiving secret information about the illegal transport of Narcotic substances, went to Singamuga Thirtham, Tiruvannamalai District and conducted a vehicle check up. Whileso, they checked an Auto bearing Regn.No.TN 25 BD 7785 and seized 1.100 Kg of Ganja from the said Auto and also caught the driver of the auto/accused. Based on the same, a case was registered in Cr.No.6/2022 under section 8(c),r/w.20(b)(ii)(B) and 25 of NDPS Act, 1985 on 4.1.2022 against the accused. Pursuant to which, the above said vehicle along with the seized contraband were produced before the learned Principal Special Judge, Special Court for EC and NDPS Act, Salem in C.P.No.11 of 2022 on 19.1.2022. The petitioner is the owner of the above said vehicle and he is not an accused in Crime No.6/2022. Further the vehicle was not involved previously in similar type of offences.

7.Perusal of records would further reveal that the contraband is not seized from the petitioner and he is only the owner of the Auto and the petitioner is ready to give guarantee and security for returning the vehicle.



If the vehicle is being kept idle in open space, it would cause damage to the vehicle and the value of the vehicle is diminished and continuing to keep the vehicle in open air would make the vehicle unusable.

8. At this juncture, it is relevant to rely upon a decision of the ***Hon'ble Supreme Court in Sunderbhai Ambalal Desai and others Vs. State of Gujarat in Special Leave Petition (Crl.)2745 of 2022 dated 01.10.2002*** and the relevant portion is extracted hereunder.

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



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

Therefore, as per the ratio laid down by the Hon'ble Apex Court, this Court is of the view that keeping the vehicle idle in the open space, will diminish its nature and lose its value and no purpose will be served. As such, considering the nature of offence and also taking into account the fact that the vehicle is not involved in any other case similar in nature previously, this Court is inclined to allow the Criminal Revision Case.

9. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 10.3.2022 passed in C.M.P.No.117 of 2022 by the Special Judge for EC/NDPS Act Cases, Salem is set aside. The respondent police is directed to return the vehicle to the owner of the vehicle on the following conditions.

- i. the petitioner shall prove his ownership of the vehicle by



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producing the R.C.Book and other relevant records;

ii. the petitioner shall not alienate or encumber the vehicle in any manner;

iii. the petitioner shall execute a bond for a sum of Rs.5,00,000/- (Rupees five lakhs only) before the Special Judge for EC/NDPS Act Cases, Salem.

iv. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future,

v. the petitioner shall take photograph of the vehicle; and

vi. the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

Index: Yes/No

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Internet: Yes/No

msr

To

1. The Special Judge for EC/NDPS Act Cases, Salem

2. The Inspector of Police,
Thiruvannamalai Police Station,
Thiruvannamalai District.

3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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