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Crl.R.C.No.98 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.98 OF 2023

L.K. Fairdeal Finance,
represented by its authorised
Power Agent Aravindraja.S.
No.37, Pilkington Road,
Ayanavaram, Chennai 600 023.

.. Petitioner

Vs

1. The State, represented by
the Inspector of Police,
T1, Ambattur Police Station.
2. K. Anand Babu
(Cr.No.2036/2020)

... Respondents

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C. to set aside the impugned order passed by the Principal Special Court under EC & NDPS Act, Chennai on 04.01.2023 in Crl.M.P.No.6350 of 2022 in Cr.No.2036 of 2020 on the file of 1st respondent, allow the revision petition and return the vehicle BAJAJ AUTO LTD/BAJAJ RE LPG model bearing Registration No.TN-05-BV-0712, bearing Engine No.24YWKK98778 and Chassis No.MD2A49AY3KWK57195 and its key to the petitioner.



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Crl.R.C.No.98 of 2023

For Petitioner : Mr. S. Chetan Prakash

For Respondent : Mr. R. Vinothraja, GA (crl.side)

ORDER

This Criminal Revision case has been filed challenging the order of dismissal dated 04.01.2023 passed by the Principal Special Court under EC and NDPS Act, Chennai in Crl.M.P.No.6350 of 2022 seeking interim custody of the vehicle viz., BAJAJ AUTO LTD/BAJAJ RE LPG model bearing Registration No.TN-05-BV-0712.

2.The learned counsel for the petitioner submitted that the petitioner is engaged in the business of vehicle financing and it has entered into a hire purchase agreement dated 12.02.2019 with the 2nd respondent for financing him to purchase the vehicle viz., Auto bearing Regn.No.TN-05-BV-0712. The hypothecation has been validly endorsed in the RC Book. Whiles, the respondent police registered a case in Cr.No.2036/2020 for the offence under section 8(c) and 20(b)(ii)(B) of NDPS Act, 1985 against the 2nd respondent along with other accused for illegal possession of 2 ½ kgs. of Ganja and arrested them, pursuant to which, they have seized the contraband along with



Crl.R.C.No.98 of 2023

WEB COPY

vehicle viz., Auto bearing Regn.No.TN-05-BV-0712 and an amount of Rs.7100/- alleging that the auto has been engaged in illegal transportation of Ganja. The 2nd respondent is arrayed as A1 in Cr.No.2036 of 2020. He further submitted that being a financier to the said vehicle, the petitioner is having interest over the property as an owner of the abovesaid vehicle. Since the vehicle is kept in open space in the police custody, it will lose its value. Therefore, seeking return of vehicle he filed Crl.M.P.No.6350 of 2022 before the Principal Special Court under EC and NDPS Act, Chennai. To support his contention, he filed copy of RC Book as well as financier agreement with the 2nd respondent/A1. But the trial court without considering the above fact, dismissed the petition on the ground that there is no hypothecation in favour of the petitioner. The petitioner is the ostensible owner/financier having valid H.P. Hypothecation endorsement in RC Book and in possession of original RC Book of the Auto.

3. It is his further contention that the 2nd respondent, till date, have only paid 15 monthly instalments, out of 36 instalments, hence as per hire purchase agreement, unless the hirer being 2nd respondent clears the due, he is not



Crl.R.C.No.98 of 2023

WEB COPY

having any right or interest on the vehicle and the same belongs absolutely to the owner under hire purchase. The vehicle has been kept under the custody of 1st respondent for more than 2 years and the 2nd respondent, till date has not taken any steps to recover the same and if the vehicle is kept in open space under unconditional weather conditions, the same would depreciate its value and user capacity. Hence, the impugned order is challenged in the present criminal revision case.

4. Further, the learned counsel for the petitioner contended 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 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 vehicle and he is ready to obey any condition imposed on him by this Court.

5. When the matter is taken up for hearing, the learned Govt. Advocate (Crlside) objected to return of vehicle, stating that the vehicle was used for



Crl.R.C.No.98 of 2023

WEB COPY

illegal transportation of Ganja weighting 2 ½ kgs. and if the vehicle is ordered to be returned, he may not produce the vehicle during trial. He fairly conceded that the vehicle is not involved in any previous case of similar in nature.

6. Perusal of records would reveal that the petitioner is a financier to the vehicle viz., Auto bearing Regn.No.TN-05-BV-0712 and the respondent police arrested the 2nd respondent who had entered hire purchase agreement with the petitioner on the allegation that he is in possession of Ganja weighing 2 ½ kgs. In Crime No.2036/2020 for the offence under section 8(c) and 20(b)(ii)(B) of NDPS Act, 1985, pursuant to which, he seized the abovesaid auto in connection with this case. The accused/owner of the auto, did not made any claim over the vehicle and the vehicle has been kept under the custody of the 1st respondent for more than 2 years.

7. In this case, though notice has been sent to 2nd respondent and his name being printed in the cause list, there is no representation for him either in person or through counsel. Hence, the 2nd respondent was called absent. Further, the 2nd respondent has not made any claim over the vehicle. In these circumstances, the petitioner being a financier, who is in possession of RC



Crl.R.C.No.98 of 2023

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Book Copy, financier agreement with the owner of the auto, claims interim custody of the above said vehicle.

8. It is evidenced by the Hire Purchase Agreement, dated 12.02.2019 that the 2nd respondent /Anand Babu (accused) is the owner of the above said auto and the petitioner has financed for the said auto. Now the vehicle is kept under the custody of the 1st respondent for two years and the 2nd respondent has not taken any steps before the appropriate forum seeking return of the vehicle. Further, the Honourable Supreme Court in the case of **Sunderbhai Ambalal Desai and others Vs.State of Gujarat in Special Leave Petition (crl.) 2745 of 2022** dated 01.10.2002 has held that in order to protect the property, the Apex Court has directed to handover the seized articles to the owner on proper Panchnama.

9. Considering the above aspects and also 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



Crl.R.C.No.98 of 2023

nature previously, this Court is inclined to allow the Criminal Revision Case.

The petitioner being the financier of the vehicle and the HP agreement is endorsed in the RC Book itself, the petitioner is entitled to get interim custody of Auto bearing Regn.No.TN-05-BV-0712.

10. In the result, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The interim custody of the Auto bearing Regn.No.TN-05-BV-0712 is ordered to be handed over to the petitioner being financier of the above said Auto on the following conditions.

- i. the petitioner/financier of the vehicle shall produce the R.C.Book endorsed with the HP agreement entered into between the petitioner and 2nd respondent and other relevant records relating to HP Agreement.
- ii. the petitioner shall execute a bond for a sum of Rs.1,00,000/-(Rupees one lakh only) before the Principal Special Court under EC & NDPS Act, Chennai.
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.



Crl.R.C.No.98 of 2023

- iv. the petitioner may take photograph of the vehicle and certified under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.
- v. the petitioner shall not alienate or encumber the vehicle in any manner;
- vi.the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future,
- vii.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

30.03.2023

msr
Index: yes/no
Internet:yes/no

To

1. The Principal Special Judge,
Principal Special Court under EC & NDPS Act, Chennai.
- 2.The Inspector of Police,
T1, Ambattur Police Station.
3. The Public Prosecutor,
Madras High Court.



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Crl.R.C.No.98 of 2023

V. SIVAGNANAM, J.

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CRL.R.C.NO.98 OF 2023

30.03.2023



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CrI.R.C.No.98 of 2023