



Crl.R.C.No.217 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.217 of 2023

Selvam

... Petitioner

-VS-

State Rep. by
The Inspector of Police,
F-5 Choolaimedu Police Station,
Chennai District.
(Crime No.456 of 2022)

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 & 401 of Cr.P.C.,
pleased to call for the entire records pertaining the order dated 19.01.2023 passed
by the Hon'ble Principal Sessions Judge under EC & NDPS Act in
Crl.M.P.No.6109 of 2022 in Crime No.456 of 2022 on the file of F-5,
Choolaimedu Police Station, Chennai and set aside the same.

For Petitioner	: Mr.Ponmudi
For Respondent	: Mr.V.Meganathan Govt. Advocate (Crl.Side)

Page No.1 of 9



Crl.R.C.No.217 of 2023

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ORDER

Challenging the order of dismissal of the petitioner's application filed to return the vehicle under Sections 451 of Cr.P.C, passed by the Principal Special Court under EC & NDPS Act, Chennai, the present Revision has been filed.

2. Based on the complaint given by one Mani, the respondent police registered a case in Crime No.456 of 2022, for the offences under Section 8 (c) r/w 20(b) (ii) (B), 25 and 29(1) of NDPS Act and the respondent police seized 1.500 kg of Ganja from the accused persons and the seized property was taken on file in B.No.22 of 2023.

3. The petition filed by the petitioner before the Special Court under EC and NDPS Act in Crl.M.P.No.6109 of 2022 was dismissed by the learned Principal Special Judge on 19.01.2023.

4. The learned counsel for the petitioner contended that the petitioner is the owner of the two wheeler bearing Registration No.TN-02-BS-4223. The petitioner

Page No.2 of 9



Crl.R.C.No.217 of 2023

is not the accused and without his knowledge, it has been used by his son A3. The petitioner does not commit any offence and he is ready to abide any condition imposed by this Court. The vehicle has been seized and stationed for more than 2 months. If the vehicle is allowed to be stationed in an open yard under all weather conditions and the natural calamities, the value of the vehicle will be drastically depreciated.

5. When the matter taken up, the Learned Government Advocate (Crl.Side) for the respondent filed counter and objected to return the vehicle. However, he submitted that the petitioner is not an accused and he is only owner of the vehicle. Hence, he prays to dismiss the petition.

6. On perusal of records, the fact reveals that the petitioner is the owner of the vehicle bearing Reg.No.TN-02-BS-4223. Based on the complaint dated 15.11.2022 given by one Mani, then Sub Inspector of Police was in station duty, at that time received a secret information about illegal transport of Narcotic substances, after receiving the secret information, he along with his Police Team



CrI.R.C.No.217 of 2023

(i.e) Tr.Suresh-HC 27823, Tr.Suresh-Gr.I PC 44226, Tr.Saravanan-PC 58007 and Tr.Venkatesh-PC 57879 went to 100 feet road nearby Arumbakkam Metro Rail parking, Choolaimedu. At that time, four unknown persons sitting on there suspiciously with Blue Color Hero Pleasure bike bearing Reg.No.TN-02-BS-4223. On seeing the police, the parties were trying to escape from that place. Immediately, the said police parties caught hold of the accused persons namely Abdhul Javeeth/A1, Jayavarmapandy/A2, Vedharaj/A3 & Hariharan/A4. On searching the said accused persons, they found 1.500 kg of Ganja from Abdhul Javeeth/A1 in a plastic sack bag. Subsequently, the respondent police has taken 2 samples of ganja each contained 100 grams and remaining 1.300 kg of ganja were kept in same bag and the same was seized along with the above said vehicle from the accused persons under the cover of seizure mahazar in the presence of witnesses. Then, the respondent police have arrested the accused persons (A1 to A4) and obtained confession statement from them. After that the Arrested Accused persons (A1 to A4) along with the seized contrabands and vehicle taken to the respondent police station.



Crl.R.C.No.217 of 2023

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7. Further on perusal of the records, the fact reveals that, a case was registered in F-5, Choolaimedu Police Station, Crime No. 456 of 2022 under Sections 8(c) r/w 20(b)(ii)(B), 25, 29(1) NDPS Act, 1985 against the accused persons (A1 to A4), on 15.11.2022 and took up the case for further Investigation. The accused persons were remanded to judicial custody. The seized materials and properties were produced before the Principal Special Court under EC & NDPS Act Cases, Chennai and the same was taken on file vide A.No.31 of 2023 dated 06.01.2023 and the seized property was taken on file vide B.No.22 of 2023. Further, the petitioner/3rd Party Owner of the vehicle, namely, Tr.Selvam, filed a petition under Section 451 r/w 457 of Cr.P.C seeking return of property, namely, Blue color Hero Pleasure bearing Reg. No. TN-02-BS-4223 before the Principal Special Court under EC & NDPS Act. The contention of the learned counsel for the petitioner that the petitioner is ready to give guarantee and security for returning the vehicle and if the vehicle is being kept idle in open space, it would cause damage to the vehicle. Further, the fact reveals that, the vehicle was not involved in any similar type of offence and the petitioner has no previous case of this nature.

Page No.5 of 9



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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.

Vehicles

“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



CrI.R.C.No.217 of 2023

*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 lost its value and no purpose will be served. Under these circumstances, considering the nature of offence and also taking into account the fact that the petitioner's vehicle was not involved in any other case similar in nature. The petitioner is entitled for interim custody of the vehicle. Therefore, this Court is inclined to return the vehicle.

9. Accordingly, the impugned order passed by the Court below is set aside and the respondent police is directed to return the vehicle bearing Registration No. TN-02-BS-4223 to temporary custody of the petitioner, on complying the following conditions:-

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



Crl.R.C.No.217 of 2023

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- 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.50,000/- (Rupees Fifty Thousand only) before the learned Principal Sessions Judge under EC & NDPS Act Cases, Chennai.**
- 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.

10. Accordingly, the Criminal Revision Case is allowed.

21.02.2023

Index : Yes/No.

bsm

To,

1. The Principal Sessions Judge under EC & NDPS Cases, Chennai.
2. The XVII Metropolitan Magistrate Saidapet, Chennai.
2. The Inspector of Police, F-5 Choolaimedu Police Station, Chennai District.
3. The Public Prosecutor, High Court of Madras, Chennai.

Page No.8 of 9



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Crl.R.C.No.217 of 2023

V.SIVAGNANAM, J.,

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Crl.R.C.No.217 of 2023

21.02.2023

Page No.9 of 9