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Crl.R.C.No.377 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.377 of 2023

Kannan

...

Petitioner

/vs/

State Represented by
The Inspector of Police,
D-2, Chengalpattu Taluk Police Station,
Chengalpattu
(Cr.No.742 of 2021

...

Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w.401 of Cr.P.C., praying to call for the records in Crl.M.P.No.3084 of 2022 on the file of the Principal Special Court under EC and NDPS Act, Chennai 104 and set aside the order dated 19.07.20022.

For Petitioner

...

Mr. K.R.Samratt

For Respondent

...

Mr.R.Vinothraja
Govt. Advocate (crl.side)



ORDER

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This Criminal Revision Case is filed by the petitioner seeking to call for the records relating to the order dated 19.07.2022 made in Crl.M.P.No.3084 of 2022 on the file of the Principal Special Court under EC and NDPS Act and set aside the same.

2. The learned counsel for the petitioner submitted that the petitioner is the accused(A1) in this case. The respondent-Police registered a case against the petitioner in Crime No.742 of 2021 for the offence under Sections 8(c), 20(b)(ii)B of Narcotic Drugs and Psychotropic Substances Act 1985. The respondent-Police, while arresting the accused persons, seized the vehicle Innova Crysta Car, bearing Registration No.TN 10 AX 0684 along with the properties. The petitioner is the owner of the vehicle. The respondent police has produced the vehicle before the Court. It is in the custody of Court now. If the vehicle is kept for a long time in the open space, it would cause damage to the vehicle. He further submit that the petitioner is not involved in any previous case and the vehicle is also not involved



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in any case similar in nature. During the pendency of the trial, the Innova Car will lose its value due to depreciation, if it is kept in a open space. Therefore, the impugned order has to be set aside.

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

4.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.

5.On perusal of the records, the fact reveals that the case of the prosecution is that on 18.10.2021 at about 10.00 hours, the respondent- Police has received a secret information about the illegal



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transportation of dry ganja and entered the same in the General Diary.

The Police team went to the scene of occurrence and conducted the vehicle check up, at that time, the accused persons Kannan/A-1, Jayganesan/A-2 and Sadgopan/A-3 were in four wheeler bearing registration number TN 10 AX 0684 [Innova Crysta Car] having possession in Cool Lip - Filter Tobacco -215 Tablets, Miraj-Swadeshi Tobacco-97 - 20 tablets, Remo pockets-45, RK Royal King-15 pockets, Vimal Pan Masala-30 pockets, V-1 Tobacco -30 Pockets, MDM Pockets-42 Pouch and 2.350 kg of dry ganja under cover of seizure mahazar. Immediately, the respondent police arrested the accused 1 to 3 and recorded their confession statement and remanded them to judicial custody. Based on the above, a case was registered in D2 Chengalpattu Taluk Police Station in Crime No.742 of 2021, U/s.24 (1),8 (c). r/w.20(b) (ii) (B), of NDPS Act, 1985 against the accused 1 to 3 on 18.10.2021. On 18.10.2021, the accused 1 to 3 arrested along with the seized materials were produced before the Special Court for NDPS Act. Chennai and they were arrested and



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remanded to judicial custody. The seized materials and the vehicle were produced before the Court on the same day.

6.Considering the nature of the case that the petitioner is the owner of the Car and 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 and the value of the vehicle is diminished and continuing to keep the vehicle in open air would make the vehicle unusable, this Court is inclined to grant interim custody of the vehicle to the petitioner.

7.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 Lave 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 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***



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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.

8. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 19.07.2022 passed in Crl.M.P.No.3084 of 2022 by the Principal Special Judge under EC & NDPS Act is set aside. The respondent police is directed to return the vehicle to the owner of the vehicle on the following conditions.



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- i. the petitioner shall prove his ownership of the vehicle by 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.15,00,000/-(Rupees fifteen lakhs only) before the Principal Special Court under EC & NDPS Act, Chennai – 104.
- 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
Internet: Yes/No
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To

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



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V.SIVAGNANAM, J.,

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