



CRL.RC.326 of 2023

V. SIVAGNANAM, J.

WEB COPY

Today, the matter is posted under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner, who submitted that this Court, by order dated 16.03.2023, in Crl.R.C.No.326 of 2023, has ordered release of vehicle belonging to the petitioner viz., Auto bearing Regn.No.TN 10 BK 7187, but due to inadvertence, in the above said order, in paragraph 1, the vehicle has been wrongly mentioned as 'Ashok Leyland lorry bearing Registration No.TN 10 BK 7187' instead of '*Auto bearing Regn.No.TN 10 BK 7187*'. Thus, he prayed for rectification of the above said mistake crept in, in the order dated 16.03.2023 passed in Crl.R.C.No.326 of 2023.

2. He further submitted that in para 9 (iii), of the above said order, this court has imposed a condition to release the vehicle that the petitioner shall execute a bond for a sum of Rs.2 lakhs before the Principal Special Judge, Principal Special Court under EC & NDPS Act Cases and when the petitioner approached the concerned court for release of vehicle, the court below insisted for production of solvency certificate to release the vehicle, which according to the petitioner, is onerous and not mentioned in the order of this Court. Hence, he prayed for suitable direction in this regard.



WEB COPY



Crl.R.C.No.326 of 2023

3. Considering the submissions of the learned counsel for the petitioner,
the following order is passed;

(a) In the order passed in Crl.R.C.No.326 of 2023, dated 16.02.2023, in para 1, the terms 'Ashok Leyland lorry bearing registration No.TN 10 BK 7187' is substituted with the terms '*Auto bearing Registration No.TN 10 BK 7187*';

(b) Similarly, in the abovesaid order, condition No.(iii) imposed in paragraph 9 is deleted and instead of that, the following passage shall be incorporated;

'iii. The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees two lakhs only) before the Principal Special Judge, Principal Special Court under EC & NDPS Act Cases and the above said court shall not insist for production of solvency certificate while releasing the vehicle;'

4. The Registry is directed to carry out necessary corrections as stated above in the order dated 16.03.2023 passed in Crl.R.C.No.326 of 2023 and issue fresh order copy.



WEB COPY



Crl.R.C.No.326 of 2023

5. In other aspects, the earlier order shall stand unaltered.

msr

14.06.2023



WEB COPY



Crl.R.C.No.326 of 2023

V.SIVAGNANAM, J.

msr

CRL.RC.326 of 2023

14.06.2023



Crl.R.C.No.326 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.326 of 2023

Joseph L C

... Petitioner

Vs.

State Rep by the Inspector of Police,
M-1 Puzhal Police Station,
Chennai
Crime No.646/2022

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the Order dated 28.09.2022 made in Crl.M.P.No.4060 of 2022 on the file of the learned Principal Special Judge, Principal Special Court under EC & NDPS Act Cases, Chennai by allowing the above Criminal Revision Case and direct the respondent to return the auto bearing registration No.TN10 BK 7187 in Crime No.646 of 2022 on the file of the Inspector of Police, M3 Puzhal Police Station, Chennai.

For Petitioner : Mr.R.Rajan

For Respondent : Mr.R.Vinothraja



WEB COPY



Crl.R.C.No.326 of 2022

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act Cases dated 28.09.2022 made in Crl.M.P.No.4060 of 2022 and to return the vehicle Ashok Leyland lorry bearing registration No. TN 10 BK 7187 to the petitioner /owner of vehicle.

2. It is the case of the prosecution that on 11.07.2022, when the respondent police along with their officials intercepted the auto rikshaw bearing registration No.TN10 BK 7187 driven by the petitioner, they found that a black colour polythene bag containing Ganja. Hence a case in Crime No.646/2022 was registered under Section 8[c] read with 20 [b] [ii] [B] of NDPS Act and the vehicle was seized.

3. The petitioner is the owner of the above said lorry and he filed a petition in Crl.M.P.No. 4060 of 2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 28.09.2022 on the ground that if the vehicle is returned, it will affect the investigation. Hence,



challenging the above said order, the petitioner filed the present Revision case.

4. The learned counsel for the petitioner submitted that the petitioner is the owner of auto rikshaw bearing registration No.TN10 BK 7187. He further submitted that the auto was purchased under hypothecation and he has to pay the EMI and if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle. He further submitted that the vehicle is not involved in any case similar in nature and 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 to the petitioner.

5. The learned Government Advocate (Crl.Side) submitted that, the petitioner is owner of the auto rikshaw bearing registration No.TN10 BK 7187 and since the above said vehicle was used to transport Ganja, it was seized and hence, he objected to return the vehicle to him.

6. Heard the learned counsel appearing for the petitioner and the



learned Government Advocate (Crl.Side) appearing for the respondent and I have perused the materials on record.

7. A perusal of the records shows that, the respondent police registered a case in Crime No.646/2022 for the offence under Section 8[c] read with 20 [b] [ii] [B] of NDPS Act with regard to transportation of ganja. Further, it reveals from the records that the petitioner is the accused in this case and he is the owner of the auto rikshaw bearing registration No.TN10 BK 7187 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.4060 of 2022, filed by the petitioner, on the ground that if the vehicle is returned, it will affect the investigation. It is the contention of the learned counsel for the petitioner that the vehicle was purchased under hypothecation and he has to pay the EMI 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.

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 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 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. As such, considering the nature of offence, this Court is inclined to allow the Revision Petition.

9. Accordingly, this Criminal Original Petition is allowed and the impugned order passed by the Trial Court is set aside. The respondent police



is directed to return the vehicle to the owner of the vehicle on the following conditions.

WEB COPY

- 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.2,00,000/- (Rupees two lakhs only) before the Principal Special Judge, Principal Special Court under EC & NDPS Act Cases.
- 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.

16.03.2023

Index: Yes/No
Internet: Yes/No
vrc

To

1. Principal Special Judge, Principal Special Court under EC & NDPS Act Cases.



Crl.R.C.No.326 of 2011

2. The Inspector of Police, Thirunavalur Police Station,
Kallakurichi.

3. The Public Prosecutor, Madras High Court.



WEB COPY



Crl.R.C.No.326 of 2023

V.SIVAGNANAM, J.,

VRC

Crl.RC No.326 of 2023

16.03.2023