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Crl.R.C.No.547 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.547 of 2023

Ramakrishnan

... Petitioner

Vs.

The State rep by the Inspector of Police,
R-8, Vadapalani Police Station,
Chennai.
(Crime No.288 of 2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order passed in Crl.MP No.6129 of 2022 dated 23.12.2022 in crime no.288 of 2022 on the file of the Principle Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.S.Apunu

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order



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passed in Crl.MP No.6129 of 2022 dated 23.12.2022 in crime no.288 of 2022 on the file of the Principle Special Court under EC & NDPS Act, Chennai.

2.It is the case of the prosecution that on 27.09.2022 at about 21.00 hours, Tr.A.Rajendran, Sub Inspector of Police have received a secret information about the illegal sale of Ganja at SIMS Hospital back side Ponnammal Street and entered the same in the General Dairy and after getting permission from the respondent police, he went into the scene of occurrence along with his Police team i.e., Tr.Velayutham, Head Constable and Tr.Iyyanar, Grade I Police Constable and Tr.Chandradass-Police Constable. At that time, two unknown persons were inside the Maruthi Suzuki Ciaz car bearing registration no.TN-05-BT-9545, and on seeing the police parties, they were trying to escape from that place. Immediately the police parties caught hold of the accused persons trying to flee from the place. During the enquiry, it came to know that the accused persons are namely Akash/A1, Sujan Mioh/A2 and Karthikeyan/A3. Then the Sub

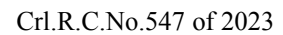


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Inspector of Police have informed the accused persons the provisions of Section 50 of NDPS Act. During search, the said vehicle found in possession of Ganja weighing 10.500 kgs. Subsequently, the Sub Inspector of Police has taken samples of 4 pockets each 50 grams. Then, the remaining Ganja are kept in the same bag and seized the above said contrabands in Maruthi Suzuki Ciaz bearing registration no.TN-05-BT-9545, an amount of Rs.50,000/- One plus Mobile Cell Phone 2 nos from the accused (A1) and seized Realme 3 Pro Cell Phone-1 from the accused (A2) under seizure mahazar in the presence of witnesses and arrested the accused persons and obtained confession statements from them.

3. Based on the above, a case was registered in R-8, Vadapalani Police Station in Crime no.288 of 2022 under Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act against the accused persons (A1 to A3) on 28.09.2022 at about 03.15 hours by the respondent police and took up the case for investigation. On the same day, the accused persons(A1 to A3) were produced before the XVII Metropolitan Magistrate Court, Saidapet and remanded them to



4.It appears that the petitioner is not the accused in this case. He is owner of the vehicle namely Suzuki Car bearing registration no.TN 05-545. The petitioner is the father of A1. He filed a petition in I.P.No.6129 of 2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 23.12.2022 by the Court below considering the nature of offence that the seized contraband is of commercial quantity and also the fact that since investigation is at crucial stage, if the vehicle is returned to the petitioner, it may affect the investigation. Challenging the above said order, the petitioner filed the present Revision case.

5.The learned counsel for the petitioner has submitted that the



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petitioner is not the accused in this case. The petitioner herein is the father of A1. The respondent Police registered a case against the accused persons in Crime no.288 of 2022 under Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act. The petitioner is not involved in any previous offences as alleged by the prosecution. He further submitted that if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle and its value gets diminished. He further submitted that the vehicle is not involved in any case similar in nature and the petitioner is ready to furnish 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 would urge this Court to order return of the vehicle to the petitioner while setting aside the order passed by the Court below.

6.The learned Government Advocate (Crl.Side) submitted that, the petitioner is the owner of the vehicle namely Suzuki Car bearing registration no.TN 05-BT-9545 and A1 is the son of the petitioner. The



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petitioner is not involved in any previous cases and he is not the accused in the present case also. Since the above said vehicle was used to transport the Ganga illegally, it was seized and hence, he objected to return the vehicle to the petitioner.

7.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.

8.A perusal of the records shows that, a case was registered in R-8, Vadapalani Police Station in Crime no.288 of 2022 under Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act against the accused persons (A1 to A3) on 28.09.2022 at about 03.15 hours by the respondent police and took up the case for investigation. The petitioner is the owner of the above said vehicle and he filed a petition in Crl.M.P.No.6129 of 2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 23.12.2022 by the Court below considering the nature of offence that the



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seized contraband is of commercial quantity and also the fact that since investigation is at crucial stage, if the vehicle is returned to the petitioner, it may affect the investigation and hence, the learned Judge refused to grant interim custody of the vehicle.

9. At this juncture, it is relevant to refer 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,*** wherein, 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



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*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 lose its value and no purpose will be served. As such, considering the ratio laid down by the Hon'ble Supreme Court, this Court is inclined to allow the Revision Petition.

10. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 23.12.2022 passed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai 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 producing the R.C.Book and other relevant records;



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ii. the petitioner shall execute a bond for a sum of Rs.6,00,000/- (Rupees Six lakhs only) before the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle namely Suzuki Car bearing registration no.TN 05-BT-9545 and such panchanama can be used in evidence.

iv. the petitioner shall take photograph of the vehicle namely Suzuki Car bearing registration no.TN 05-BT-9545 and certified under Section 65B of the Central At 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.

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Index: Yes/No
Internet: Yes/No
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To

1. The learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai

2. The Inspector of Police,
R-8, Vadapalani Police Station,
Chennai.
(Crime No.288 of 2022)

3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,
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