



Crl.R.C.No.507 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.507 of 2023

Thiyagarajan

... Petitioner

Vs

State rep.by
The Inspector of Police,
T-14, Mangadu Police Station.
(Crime No.668 of 2022)

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w 401 Cr.P.C. to set aside the order dated 19.01.2023 made in Crl.M.P.No.5407 of 2022 on the file of Principal Special Court under EC & NDPS Act, Chennai, and to allow the criminal revision.

For Petitioner : Mr. R.Parthiban

For Respondent : Mr. R. Vinothraja,
Government Advocate (Crl.side)



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ORDER

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Challenging the order dated 19.01.2023 passed in Crl.M.P.No.5407 of 2022 by the learned Principal Special Judge, Principl Special Court under EC & NDPS Act, Chennai, this Criminal Revision Case has been filed.

2 The petitioner was arrested along with A2 for having illegal possession of 325 Nos. of Tydol 100 mg tablets. Hence the respondent police registered a case against the petitioner and one another in Cr.No.668/2022 for the offence under Sections 8(c) and 22(a) of NDPS Act and Section 328 of IPC. Pursuant to which, they have seized the vehicle viz. Bajaj Pulsar Bike Black color bearing Reg.No.TN85-C-1143 and Vivo Mobile phone model-V2149 alleging that the same have been involved in illegal transportation of the said contraband. Since the petitioner is the owner of the properties, he filed a petition in Crl.MP.No.5407 of 2022 before the Principal Special Curt under EC & NDPS Act, Chennai, for return of property. The trial court dismissed the petition considering the objection made by the respondent to return the properties.



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3 The learned counsel for the petitioner submitted that the vehicle is not involved in any previous case of offence of similar in nature. If vehicle is kept in open space under unconditional weather conditions, the same would depreciate its value and user capacity.

4 Further, the learned counsel for the petitioner contended that no purpose will be served in keeping the properties 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 the properties and also he will produce the same, as and when required either before the respondent police or before the trial court. Hence, he prayed to return the properties and he is ready to obey any condition imposed on him by this Court.

5 The learned Govt. Advocate (Crl.side) objected to return of properties, stating that the same was used for transportation of the contraband and if the properties are ordered to be returned, he may use the same for committing same offence. He fairly conceded that the vehicle is not involved



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in any previous case of similar in nature.

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6 Heard both sides and perused the entire materials available on record.

7 A perusal of the records would reveal that a complaint was given by one Azarudeen, stating that on 19.08.2022 at about 11.00 a.m. while he was returning home, the petitioner and one another approached him and stated that they are having narcotic pills and insisted him to buy it. The defacto complainant also bought the pills and after consuming the same, he was affected by some illness. Hence he lodged complaint before the respondent police. Pursuant to which, a case has been registered by the respondent police on 20.08.2022 in Cr.No.668 of 2022 for the offence under Sections 8(c) and 22(a) of NDPS Act and Section 328 of IPC and seized the properties as stated above.



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8 Perusal of records would further reveal that the petitioner is the owner of properties and he is ready to give guarantee and security for returning the properties. If the vehicle is being kept in an 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. 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 nature previously, this Court is inclined to allow the Criminal Revision Case.



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10 In the result, this Criminal Revision Case is allowed and the impugned order 19.01.2023 passed in C.M.P.No.5407 of 2022 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, is hereby set aside. The interim custody of the Bajaj Pulsar Bike Black color bearing Reg.No.TN85-C-1143 and Vivo Mobile phone model-V2149 is ordered to be handed over to the petitioner, who is the owner of the same on the following conditions;

- i. the petitioner shall prove his ownership of the properties by producing the R.C.Book and other relevant records;
- ii. the petitioner shall execute a personal bond for a sum of Rs.1,00,000/-(Rupees One lakh only) before the Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, and the learned Principal Special Judge, shall not insist for production of solvency certificate.
- iii.The Court may prepare a panchnama in Judicial Form No.82 with regard to the properties and such panchanama can be used in evidence.
- iv.the petitioner may take photograph of the properties and certified under Section 65B of the Central Act 1 of 1972



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and such photographs may be used as secondary evidence.

- v. the petitioner shall not alienate or encumber the properties in any manner;
- vi.the petitioner shall give an undertaking that he will not use the properties for any illegal activities in future;
- vii.the petitioner shall also produce the properties as and when required before the court below and before the respondent police.

Index: yes/no

Internet:yes/no

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To

1. The Principal Special Judge,
Principal Special Court under EC & NDPS Act, Chennai.
2. The Inspector of Police, T-14, Mangadu Police Station.
3. The Public Prosecutor, Madras High Court.



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V. SIVAGNANAM, J.

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