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Crl.R.C.No.641 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.641 of 2023

Sathishkumar

... Petitioner

Vs.

State Rep by
The Inspector of Police,
Chemmancherry Police Station,
Chennai
(Crime No.190 of 2022)

... Respondent

Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 23.09.2022 made in Crl.M.P.No.4537 of 2022 on the file of the Principal Special Court under EC and NDPS Act, Chennai and consequently return the vehicle to allow the above criminal revision petition.

For Petitioner : Mr.R. Parthiban

For Respondent : Mr.R.Vinothraja, GA, (crl.side)

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.4537 of 2022 dated 23.09.2022 and to return the



Scooter Moped bearing Registration No.TN-64-R-1402 to the petitioner
/owner of vehicle.

2.It is the case of the prosecution that on 23.07.2022 at about 22.00 hours, the respondent Police, based on the secret information about illegal transportation of dry Ganja near Village High Road, Sholinganallur, Chennai rushed to the spot and caught the petitioner along with other accused with the Scooter Moped bearing Registration No.TN-64-R-1402 and seized 1.800 kgs of dry Ganja. The respondent-Police arrested the accused persons and registered the case against them in Crime No.190/2022 under Sections 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of NDPS Act.

3.The petitioner is the brother of A2 and he is the owner of the above said vehicle. He filed a petition in Crl.M.P.No.4537 of 2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 23.09.2022 on the ground that the vehicle in question was seized from A1 and A2 and if it is returned to the petitioner, he may



involve his vehicle in similar nature of offence. Hence, challenging the above said order, the petitioner filed the present Revision case.

4.The learned counsel appearing for the petitioner contended that the petitioner is the owner of the Scooter Moped bearing Registration No.TN-64-R-1402. The respondent Police arrested A1 along with other accused for having illegal possession of 1.800kg of dry Ganja and also seized the vehicle. They were arrested on 24.07.2022 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of NDPS Act in Crime No.190 of 2022. He further submitted that 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) appearing for the respondent has filed a counter stating that the petitioner is the owner of the vehicle. He further submitted that the vehicle in question is not involved in any case similar in nature. However, if the vehicle is handed over to the petitioner, he may involve his vehicle in a similar type of offence. 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 against the accused in Crime No.190 of 2022 for the offence under Sections 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of NDPS Act with regard to illegal possession of 1.800 kgs of dry Ganja. Further, it reveals from the records that the petitioner is the brother of A2 and he is the owner of the Scooter Moped bearing Registration No.TN-64-R-1402 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.4537 of 2022 filed by the petitioner on the ground



that the vehicle was seized from A1 and A2 by the respondent Police from the scene of occurrence and if the vehicle is returned to the petitioner, it may be used in similar nature of offence. 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.



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*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 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.



9. In the result, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The interim custody of the vehicle is ordered to be handed over to the petitioner on the following conditions.

- i. the petitioner shall prove his ownership of the Scooter Moped bearing Registration No.TN-64-R-1402 by producing the R.C.Book and other relevant records;
- ii. the petitioner shall execute a bond for a sum of Rs.30,000/- (Rupees thirty thousand only) before the learned Principal Special Court under EC & NDPS Act, Chennai.
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.
- iv. the petitioner may take photograph of the vehicle 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.

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vii.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

09.06.2023

Index:Yes/No

Internet:Yes/No

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To

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

2.The Inspector of Police,
Chemmancherry Police Station,
Chennai

3.The Public Prosecutor, High Court, Madras.



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V. SIVAGNANAM, J.

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