



Crl.R.C.No.519 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.R.C.No.519 of 2023

Sudharsan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
T-1 Tambaram Police Station,
Chennai.
(Crime No.906/2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records and set aside the order in Crl.M.P.No.880 of 2023 dated 22.02.2023 on the Principal Special Court for EC & NDPS Act, Chennai and to direct the respondent to return the property bike Yamaha R15 bearing registration No.TN 02 BW 5090 to the petitioner seized in Crime No.906/2022 on the file of the respondent police by allowing the criminal revision petition.

For Petitioner : Mr.S.Gokulakannan

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



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Crl.R.C.No.519 of 2023

ORDER

This Criminal Revision Case has been filed to set aside the order dated 22.02.2023 passed in Crl.M.P.No.880 of 2023 by the Principal Special Court for EC & NDPS Act, Chennai.

2. The case of the prosecution is that on 22.12.2022 at about 08.00 hours, the *defacto* complainant namely Tr.Thirunavukarasu, the then Sub Inspector of Police, attached to Prohibition Enforcement Wing, Pallikaranai, Chennai received a secret information and the Sub Inspector of Police along with his police party went to the scene of occurrence conducting vehicle check up, at that time A1 & A2 came in their two wheeler Yamaha R15 bearing registration No.TN 02 BW 5090, when the respondent police enquired them, they were found in illegal possession of 1.700 grams of dry ganja. Further the respondent police arrested the accused and recorded their confession and also seized the case properties under the cover of seizure Mahazar from the scene of occurrence in the presence of witnesses. Since



Crl.R.C.No.519 of 2023

the case belongs to the Tambaram Police Station with regard to that the respondent police produced the accused before the T-1 Tambaram Police Station, Chennai along with case property. A case was registered in T-1 Tambaram Police Station, Chennai in Cr.No.906/2022, u/s 8(c) r/w 20(b), (ii)(B) of the NDPS Act against the accused (A1 & A2) on 02.12.2022 at about 14.30 hours.

3. During the pendency of the investigation, the petitioner filed a petition before the Principal Special Court for EC & NDPS Act, Chennai, in Crl.M.P.No.880 of 2023 under Sections 451 of Cr.P.C. for return of vehicle and the learned Magistrate by an order dated 22.02.2023 dismissed the same. Challenging the said order, the petitioner has filed the present revision before this Court.

4. The learned counsel for the petitioner submitted that the petitioner is the owner of the two wheeler Yamaha R15 bearing Registration No.TN 02 BW 5090. He further submitted that he has no knowledge of the accused



Crl.R.C.No.519 of 2023

and there is no previous case against this petitioner as well as the vehicle was not involved in any other case, similar in nature.

5. The learned counsel further submitted that, no purpose will be served in keeping the vehicle 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. He further submitted that the petitioner is ready to abide by any condition imposed by this Court 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.

6. The learned Government Advocate (Crl.Side) submitted that the petitioner is the owner of the Two Wheeler bearing Registration No.TN 02-BW 5090 and it was seized along with 1.700 grams of dry Ganja. He further submitted that the petitioner is not an accused and he is the friend of the accused. The two wheeler was used to transport Ganja illegally and if



Crl.R.C.No.519 of 2023

the vehicle is returned to the petitioner, there are every chances to use it for committing similar type of offence. Hence, he objected to return the vehicle to the custody of the petitioner.

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

8. On a perusal of the records, it reveals that the petitioner is the owner of the two wheeler bearing Registration No.TN 02 BW-5090 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.880 of 2023, filed by the petitioner, on the ground that the petition, if the vehicle is returned to the petitioner it may affect investigation and the vehicle may also be used in similar nature of offence. It is the contention of the learned counsel for the petitioner that 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.

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9. 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



Crl.R.C.No.519 of 2023

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 and also taking into account the fact that the vehicle is not involved in any other case similar in nature, this Court is inclined to allow the Criminal Revision Case.

10. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 22.02.2023 passed in Crl.M.P.No.880 of 2023 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:

(i) The Court shall prepare detailed panchanama of the vehicle and phone;

(ii) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove her ownership and the respondent police, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle;



Crl.R.C.No.519 of 2023

(iii)The petitioner shall not alter or alienate the vehicle in any manner till confiscation proceedings is over;

(iv) The petitioner *shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) to the satisfaction of the Principal Special Court for EC & NDPS Act, Chennai.*

(v)The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent or the Court below as well as by the District Collector of the District or authorized officer in that behalf by the Government.

28.03.2023

Index: Yes/No
Internet: Yes/No
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To

1. The Principal Special Judge for EC & NDPS Act, Chennai.
2. The Inspector of Police,
T-1 Tambaram Police Station, Chennai.

8 of 10



Crl.R.C.No.519 of 2023

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3. The Public Prosecutor,
Madras High Court,
Chennai.



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CrI.R.C.No.519 of 2023

V.SIVAGNANAM, J.,

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CrI.RC No.519 of 2023

28.03.2023