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Crl.R.C.No.517 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.517 of 2023

K.Ashwini
Petitioner

...

Vs.

State, represented by
The Inspector of Police,
T-17, Perumbakkam Police Station,
Chennai 600 131
(Crime No.190 of 2022)
Respondent

...

Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.687 of 2023, dated 10.02.2023 by the learned Principal Special Court under EC & NDPS Act, Chennai dated 10.02.2023 and to return the bike bearing Registration No.TN-19BV 2752.

For Petitioner : Mr.M.V.Bibin Mahesh

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

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the Principal Special Court under EC and NDPS Act,



Chennai in Crl.M.P.No.687 of 2023 dated 10.02.2023 and to return the Yamaha MT 15 V 2.0 bearing Registration No.TN-19BV 2752 to the petitioner /owner of vehicle.

2.It is the case of the prosecution that on 24.08.2022 at about 10.05 hours, the respondent police along with their team went to Ezhil Nagar, Perumbakkam, based on the secret information about illegal sale of Ganja in that area and at that time, A1 to A6 were standing in suspicious manner in that area and the respondent Police arrested them and seized 3.500kgs of Ganja and the two wheeler bearing Registration No.TN-19BV 2752. Hence a case in Crime No.190/2022 was registered under Sections 8(c) r/w 20(b)(ii)(B), 25, 29(i) of NDPS Act.

3.The petitioner is the owner of the above said yamaha bike and she filed a petition in Crl.M.P.No.687 of 2023 before the Trial Court to release the vehicle to her. But it was dismissed, vide order dated 10.02.2023 on the ground that the vehicle was seized from A1, who is the petitioner's sister husband, from the scene of occurrence and at the same



time, both are residing at the same residence. The petitioner has also not mentioned in the petition as to how the vehicle has gone to the hands of A1. 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 sister-in-law of A1 and she is not an accused in this case. The petitioner is the owner of the two wheeler bearing Registration No.TN-19BV 2752. She is a third party and without her knowledge, A1 took the bike. The respondent Police arrested A1 along with other accused for having illegal possession of 3,500 kgs of ganga and also seized the vehicle. They were arrested on 24.08.2022 for the alleged offences punishable under section 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 she 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 the third party. A1 is the relative of this petitioner. He further submitted that the vehicle in question is not involved in any case similar in nature. However, he objected to return the vehicle to her.

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 3.500 kgs ganja. Further, it reveals from the records that the petitioner is the owner of the Yamaha MT 15 V 2.0 bearing Registration No.TN-19BV 2752 and it was seized by the



respondent police. The Trial Court dismissed the petition in Crl.M.P.No.687 of 2023, filed by the petitioner, on the ground that the vehicle was seized from A1, who is the relative of this petitioner and in the petition, she has not given proper reasons as to how the vehicle has gone to the hands of A1. It is the contention of the learned counsel for the petitioner that without the knowledge of the petitioner, A1 took the bike and she has no knowledge about the usage of the vehicle illegally. 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 Leave 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



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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.***

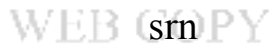
Therefore, as per the ratio laid down by the Hon'ble Apex Court, this Court is of the view that, keeping the vehicle idle in the open space, will



diminish its nature and 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. Accordingly, this Criminal Revision Case 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.

- i. the petitioner shall prove her 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.1,00,000/- (Rupees one lakh only) before the Principal Special Court under EC and NDPS Act, Chennai..
- iv. the petitioner shall give an undertaking that she 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 before the respondent police.



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Internet: Yes/No

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

3.The Public Prosecutor, High Court, Madras.



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V. SIVAGNANAM, J.

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