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Crl.R.C.No.1294 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.1294 of 2023

Rajesh

...

Petitioner

Vs.

The Inspector of Police,
P-1, Pulianthope Police Station,
Chennai.

...

Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order dated 15.07.2022 passed in Crl.M.P.No.2673 of 2022 by the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.N.Sudharsan

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



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ORDER

Challenging the orders dated 15.07.2022 passed in Crl.M.P.No.2673 of 2022 by the Principal Special Court under EC & NDPS Act, Chennai, the present revision case is filed.

2.The present revision petitioner filed an application before the trial Court under Section 451 Cr.P.C. seeking return of two wheeler bearing Registration No.TN 04 AZ 2327 which was seized by the respondent Police in connection with crime No.261 of 2022 for the offences punishable under Sections 8(c) r/w 20 (b) (ii) (B) of NDPS Act.

3.The case of the prosecution is that on 09.04.2022 at about 10.00 hours, the Sub Inspector of Police, P1, Pulianthope Police Station was conducting a regular vehicle check up and intercepted a two wheeler bearing registration No.TN 04 AZ 2327. Both the rider and pillion rider of the vehicle were found in possession of 2kg Ganja. Thereafter, FIR was registered in Crime No.261 of 2022 and the accused were arrested and



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the contraband was seized along with the vehicle. The petitioner, who is the first accused, claiming to be the owner of the vehicle filed an application in Crl.M.P.No.2673 of 2022 in Cr.No.261 of 2022 before the Principal Special Court Under EC & NDPS Act, Chennai – 104 for return of the vehicle. The said petition was dismissed by the Principal Special Judge on the ground that if the vehicle is returned to the petitioner, it will affect the investigation.

4.Heard Mr.N.Sudharsan, learned counsel appearing for the revision petitioner and Mr.R.Vinothraja, learned Government Advocate (Crl. Side) appearing for the respondent.

5.Mr.N.Sudharsan, learned counsel appearing for the revision petitioner contended that if the two wheeler is kept in an open space, the value of the same will diminish over a period of time and hence, prayed for return of the same.



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6.Mr.R.Vinothraja, learned Government Advocate (Crl.side) appearing for the respondent contended that the revision petitioner is involved in similar offence in the crime No.786 of 2020 of F1 Chintadripet Police Station and therefore, prayed for dismissal of the petition.

7.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

“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.

In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle



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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.”

8.Keeping the vehicle idle in an open space, would diminish the value of the vehicle over a period of time. As such, considering the ratio laid down by the Hon'ble Supreme Court, this Court is inclined to allow the criminal revision case.

9. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 15.07.2022 passed in Crl.M.P.No.2673 of 2022 by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai-104, is hereby set aside. The Principal Special Judge,



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Principal Special Court under EC & NDPS Act, Chennai-104, is directed

to return the two wheeler on the following conditions :

- i) the petitioner shall prove his ownership of the vehicle by producing the R.C.Book and other relevant records;
- ii) the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) before the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai – 104.
- iii) the Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing Reg.No.TN 04 AZ 2327 and such panchanama can be used in evidence.
- iv) the petitioner shall take photograph of the vehicle bearing Reg.No. TN 04 AZ 2327 and certified under Section 65B of the Central Act 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;



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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.

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
sms

31.07.2023

To

- 1.The Inspector of Police,
P-1, Pulianthope Police Station,
Chennai.
- 2.The Principal Special Court under EC & NDPS Act,
Chennai-104.
- 3.The Public Prosecutor,
High Court, Madras.



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R. HEMALATHA, J.

sms

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