



Crl.R.C.No.633 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.633 of 2023

Nirmala

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
D-5, Pallipattu Police Station,
Thiruvallur District.
(Crime No.149 of 2022)

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order dated 04.03.2023 made in Crl.M.P.No.1116/2023 on the file of Principal Special Court Under EC & NDPS Act Chennai.

For Petitioner : Mr.V.Arunkumar

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

ORDER

Challenging the orders dated 04.03.2023 in Crl.M.P.No.1116/2023 passed by the learned Principal Special Judge under EC & NDPS Act, Chennai, the present revision is filed.

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2. The revision petitioner filed a petition in Crl.M.P.No.1116/2023 in C.C.No.01/2023 on the file of the above said Court under Sections 451 & 457 Cr.P.C seeking return of two wheeler Honda Activa 4G BS IV bearing Reg No.TN 13-J-2162 brown colour which was seized by the Inspector of Police, D-5, Pallipattu Police Station, Thiruvallur District in Crime No.149/2022 for the offence punishable under Sections 8(c) r/w.20(b)(ii)(B) of NDPS Act and 328 IPC.

3. The case of the prosecution is that the revision petitioner is the mother of the first accused. A1 and A2 were found in illegal possession of 5.500 Kgs of Ganja on 11.11.2022 by the respondent police. The contraband was seized from them which was kept in the two wheeler, namely, Honda Activa 4G BS IV bearing Reg No.TN 13-J-2162. Both of them were remanded to judicial custody on the same day. The seized vehicle along with the contraband was produced before the Principal Special Court under EC & NDPS Act in B.No.395/2022 dated



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18.11.2022. Therefore, the present revision petitioner filed a petition for return of the vehicle.

4. The learned Principal Special Judge under EC & NDPS Act vide her orders dated 04.03.2022 dismissed the petition, challenging which, this criminal revision is filed.

5. Heard, Mr.V.Arunkumar, learned counsel for the revision petitioner and Mr.R.Vinothraja, learned Government Advocate (Crl. Side) learned counsel for the respondent.

6. Mr.R.Vinothraja, learned Government Advocate (Crl. Side) contended that the investigation in the instant case is completed and that final report was also filed before the concerned Court in C.C.No.1/2023. He would further contend that there are 13 cases against the present accused for the alleged offences of theft and robbery and that the present petitioner is a habitual offender. Therefore, he would submit that the two wheeler of the petitioner may not be returned and prayed for dismissal of



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WEB.COM this revision.

7. Mr.V.Arunkumar, learned counsel for the revision petitioner contended that out of 13 cases, the accused was acquitted in 9 cases. He also produced copies of the judgments passed in all these cases. He further contended that if the seized vehicle is kept in an open space, the value of the vehicle would diminish over a period of time and hence, he prayed for return of the same.

8. It is relevant to refer to a decision of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai and others Vs. State of Gujarat*** reported in ***(2002) 10 SCC 283*** in which it was held thus :

“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



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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 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.”

9. Considering the facts and circumstances of the case and the fact that the revision petitioner who is the mother of the accused is not involved in any of the offences, this Court is inclined to allow this revision. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 04.03.2023 in Crl.M.P.No.1116/2023 passed by



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the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai is set aside. Learned Principal Special Judge is directed to return the two wheeler of the petitioner subject to the following conditions :

- i) the petitioner shall prove the ownership of the vehicle by producing R.C.Book and other relevant records;
- ii) the R.C.Book shall be deposited in the Court and the Court shall issue a certificate in this regard.
- iii) 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.
- iv) the Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing Reg.No.TN13-J-2162 and such panchanama can be used in evidence.
- v) the Court shall take photograph of the vehicle bearing Reg.No.TN13-J-2162 and certify the same under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.
- vi) the petitioner shall not alienate or encumber the vehicle in any manner whatsoever;
- vii) the petitioner shall give an undertaking that she would not use the vehicle for any illegal activities in future,



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viii) the petitioner shall also produce the vehicle as and when required by the court below and by the respondent police.

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

To

- 1.The Principal Special Judge for NDPS Act, Chennai.
- 2.The Inspector of Police, D-5, Pallipattu Police Station, Thiruvallur District.

R. HEMALATHA, J.



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