



Crl.R.C.No.758 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.758 of 2023

Jayanthi

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Petitioner

Vs

State Rep. By

The Inspector of Police

T15, SRMC Police Station,

Chennai.

...

Respondent

Prayer: Criminal Revision Case filed under section 397 r/w 401 Cr.P.C. to call for the records pertaining to the order in Crl.M.P.No.1742 of 2023 in Crime No.688 of 2022 dated 24.03.2023 passed by the learned Principal Special Court under EC & NDPS Act, Chennai – 600 104, set aside the same and direct the trial Court to return the motor cycle namely Yamaha Cygnus Rayzer Street Rally bearing Reg.No.TN 12 AE 0139 to the petitioner.

For Petitioner : Mr.N.S.Ramesh Durai

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



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ORDER

Challenging the order dated 24.03.2023 passed in Crl.M.P.No.1742 of 2023 by the learned Principal Special Court under EC & NDPS Act, Chennai – 600 104, the criminal revision case has been filed.

2.The case of the prosecution is that on 07.12.2022 at about 14.00 hours, based on the secret information about the illegal transport of dry ganja, the then Sub Inspector of police along with the police team went to the Porur Rettey service road junction and conducted the vehicle check up, at that time A-1/Sibiraj and A-2/Naveenkumar were in two wheeler bearing registration number TN 12 AE 0139 (Yamaha Scooter) found in possession of 1.200 kg of dry ganja. In respect of the same, a case was registered in Crime No.688 of 2022 under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985 against the accused (A1 & A2) and the seized materials were produced before the Special Court for NDPS Act, Chennai in B.No.106 of 2023 on 18.02.2023.



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3.The learned counsel for the petitioner submitted that the petitioner, who is the owner of the vehicle, filed a petition before the learned Principal Court under EC & NDPS Act, Chennai in Crl.M.P.No.1742 of 2023 for return of her Two Wheeler Yamaha Cygnus Rayzr Street Rally bearing Registration No. TN 12 AE 0139 and the same was dismissed on 24.03.2023. Further, he submitted that the petitioner is the owner of the seized Two wheeler Yamaha Cygnus Rayzr Street Rally bearing Reg.No.TN 12 – AE-0139 and the vehicle is not involved in any previous case of offence of similar in nature. The vehicle has been kept under the custody of the court and if the vehicle is kept in open space under unconditional weather conditions, the same would depreciate its value and user capacity.

4.Further, the learned counsel for the petitioner contended 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. The petitioner is ready to give appropriate guarantee as well as security for return of vehicle and also she will produce the



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vehicle, as and when required either before the respondent police or before the trial court. Hence, she prayed to return the vehicle and she is ready to obey any condition imposed on her by this Court.

5. The learned Govt. Advocate (Crl.side) appearing for the respondent objected to return of vehicle stating that the petitioner is the mother of the first accused and the vehicle was involved in this crime and if the vehicle is ordered to be returned, it may be used for committing the same offence. He fairly conceded that the vehicle is not involved in any previous case of similar in nature.

6. Heard both sides and perused the entire materials available on record.

7.A perusal of the records would reveal that on 07.12.2022 at about 14.00 hours, based on the secret information about the illegal transport of dry ganja, the then Sub Inspector of police along with the police team went to the Porur Rettey service road junction and conducted the vehicle check up, at that time A-1/Sibiraj and A-2/Naveenkumar were in two wheeler bearing



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registration number TN 12 AE 0139 (Yamaha Scooter) found in possession of 1.200 kg of dry ganja. Immediately, the respondent police arrested A-1 & A-2 and remanded into judicial custody. In respect of the same, a case was registered in Crime No.688 of 2022 under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985 against the accused (A1 & A2) and the seized materials were produced before the Special Court for NDPS Act, Chennai in B.No.106 of 2023 on 18.02.2023.

8. Further, on perusal of records, it is seen that the petitioner is the owner of vehicle and she is ready to give guarantee and security for returning the vehicle. If the vehicle is being kept in an open space, it would cause damage to the vehicle and the value of the vehicle is diminished and continuing to keep the vehicle in open air would make the vehicle unusable. Further, the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai and others Vs.State of Gujarat in Special Leave Petition (crl.) 2745 of 2022** dated 01.10.2002 has held that in order to protect the property, the Apex Court has directed to handover the seized articles to the owner on proper



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9. Considering the above aspects and also 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.

10. In the result, this Criminal Revision Case is allowed and the impugned order dated 24.03.2023 passed in Crl.M.P.No.1742 of 2023 by the Principal Special Court under EC & NDPS Act at Chennai, is hereby set aside. The interim custody of the Two Wheeler Yamaha Cygnus Rayzr Street Rally bearing Reg.No. TN 12 – AE-0139 is ordered to be handed over to the petitioner, who is 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 execute a personal bond for a sum of



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Rs.70,000/-(Rupees Seventy Thousand only) before the Principal Special Court Under EC & NDPS Act, Chennai, and the learned Judge shall not insist for production of solvency certificate.

- 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 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;
- 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
sms

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To

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- 1.The learned Principal Special Court under EC & NDPS Act,
Chennai – 600 104,
- 2.The Inspector of Police
T15, SRMC Police Station,
Chennai.
3. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.



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