



Crl.R.C.No.802 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.802 of 2023

Vasanthakumar

...
Vs

Petitioner

State Rep by
The Inspector of Police,
D-1 Thiruthani Police Station,
Crime No.651 of 2022.

...

Respondent

Prayer: Criminal Revision Case filed under section 397 r/w 401 Cr.P.C.to call for the records relating the order dated 07.03.2023 made in Crl.M.P.No.1025 of 2023 in Crime No.651 of 2022 on the file of the learned Principal Special Court under EC & NDPS Act, Chennai and set aside the same and direct the respondent herein to return the vehicle /two-wheeler Dio Drum bearing registration No.TN20DY6334 having Engine No.JF98EW0120077 & Chasis No.ME4JF983JMW051144

For Petitioner : Mr.S.Senthilvel

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



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ORDER

Challenging the order dated 07.03.2023 passed in Crl.M.P.No.1025 of 2023 by the learned Principal Special Court under EC & NDPS Act, Chennai, the criminal revision case has been filed.

2.The case of the prosecution is that on 17.12.2022 at about 09.15 hours, after receiving the secret information about illegal transport of Narcotic substances, the respondent police along with the police team went to the scene of occurrence (i.e.) nearby Mathur Gate. At that time, the three accused persons came from that place with two wheelers Activa bearing Reg.No. TN – 20-CB- 2006 and Dio bearing Reg.No.TN-20-DY-6334, immediately, the respondent police caught hold of the accused persons and during the enquiry, came to know that the accused persons namely, Santhoshkumar/A1, Manokaran / A2 and Dhanush/A3. On searching the said accused persons, found in possession of 1.400 kgs Ganja and the same was seized along with Activa bearing Reg.No.TN-20-CB-2006 and iphone – 1 from A1, Dio bearing Reg.No.TN-20-DY-6334 from A2 under the cover of seizure mahazar in the



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presence of witnesses. Then, the respondent police have arrested the accused persons (A1 to A3). Based on the above, a case was registered in Crime No.651 of 2022 under Sections 8 (c), r/w 20 (b)(ii)(B) of NDPS Act, 1985 & 328 IPC against the accused 1 to 3 on 17.12.2022 and on the same day, the respondent Police have produced the arrested accused 1 to 3 before the Judicial Magistrate No.II, Thiruthani and remanded to Judicial custody and produced the seized materials before the Principal Special Court for EC/NDPS Act Cases, Chennai in A.No.235 of 2023 & B.No.225 of 2023.

3.The learned counsel for the petitioner submitted that the petitioner is the owner of the seized two wheeler viz., Dio Drum bearing Reg.No.TN 20 DY 6334 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. Therefore, the petitioner has filed a petition in Crl.M.P.No.1025 of 2023 for return of his vehicle and the same was dismissed by the trial Court.



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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 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 and he is ready to obey any condition imposed on him 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 friend of the second accused and the vehicle was involved in this crime and and if the vehicle is ordered to be returned, he may use the vehicle for committing same offence. He fairly conceded that there is no previous cases against the second accused and vehicle also not involved in any other offence.



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

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7.A perusal of the records would reveal that on 17.12.2022 at about 09.15 hours, after receiving the secret information about illegal transport of Narcotic substances, the respondent police along with the police team went to the scene of occurrence (i.e.) nearby Mathur Gate. At that time, the three accused persons came from that place with two wheelers Activa bearing Reg.No. TN – 20-CB- 2006 and Dio bearing Reg.No.TN-20-DY-6334, immediately, the respondent police caught hold of the accused persons and enquired them, they came to know that the accused persons namely, Santhoshkumar/A1, Manokaran / A2 and Dhanush/A3 and found in possession of 1.400 kgs Ganja and the same was seized along with Activa bearing Reg.No.TN-20-CB-2006 and iphone – 1 from A1, Dio bearing Reg.No.TN-20-DY-6334 from A2 under the cover of seizure mahazar in the presence of witnesses. Then, the respondent police have arrested the accused persons and registered a case in Crime No.651 of 2022 under Sections 8 (c), r/w 20 (b)(ii)(B) of NDPS Act, 1985 & 328 IPC against the accused 1 to 3 on



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17.12.2022. Thereafter, produced the accused 1 to 3 before the Judicial Magistrate No.II, Thiruthani and produced the seized materials before the Principal Special Court for EC/NDPS Act Cases, Chennai in A.No.235 of 2023 & B.No.225 of 2023.

8. Further, on perusal of records, it is seen that the petitioner is the owner of vehicle and he is the friend of the second accused and he 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 Honourable 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 Panchnama.

9.Considering the above aspects and also the ratio laid down by the



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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 07.03.2023 passed in Crl.M.P.No.1025 of 2023 by the Principal Special Court under EC & NDPS Act at Chennai, is hereby set aside. The interim custody of the Dio Drum bearing Reg.No. TN 20 DY 6334 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 his 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 Rs.80,000/-(Rupees Eighty 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



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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

13.06.2023

To

1. The learned Principal Special Court under EC & NDPS Act,
Chennai – 600 104.
2. The Inspector of Police,
D-1 Thiruthani Police Station,
Crime No.651 of 2022.
3. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.



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