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Crl.R.C.No.877 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.RC.No.877 of 2023

S.Karpagam
Petitioner

...

Vs.

The State by
The Inspector of Police,
PEW East, Triplicane Police Station,
Chennai District.
Crime No.56 of 2023
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the entire records connected with the Order made in Crl.M.P.No.1703 of 2023 [in Crime No.56 of 2023] on the file of the PEW East, Triplicane Police Station, Chennai District] dated 23.03.2023 by the learned Principal Special Court under EC & NDPS Act, Chennai and set aside the same and consequently direct the respondent to



Crl.R.C.No.877 of 2023

return the custody of the petitioner's property viz., Yamaha R15 motor bike

bearing Registration No.TN 05 CD 5985, Engine No.G3N4E0163206,
Chasis No.ME1RG6717M0103747 to the petitioner.

For Petitioner : Mr.R.Gobika

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed challenging the order passed by the learned Principal Special Court under EC & NDPS Act, Chennai dated 23.03.2023 made in Crl.M.P.No.1703 of 2023 and to return the vehicle, Yamaha R15 motor bike bearing Registration No.TN 05 CD 5985 to the petitioner /owner of vehicle.

2. It is the case of the prosecution that on 12.02.2023, on secret information when the respondent police went near Kanmani Petrol Bunk



Crl.R.C.No.877 of 2023

WEB COPY

Choolai, the accused were found illegally selling ganja and hence a case in Crime No.56 of 2023 was registered for the offences under Sections 8[C], read with 20[b], 21[a] of NDPS Act and the vehicle, Yamaha R15 motor bike bearing Registration No.TN 05 CD 5985 was seized.

3. The petitioner is the owner of the above said vehicle and she filed a petition in Crl.M.P.No.1703 of 2023 before the Trial Court to release the vehicle to her. But it was dismissed, vide order dated 23.03.2023 on the ground that the investigation is pending. Hence, challenging the above said order, the petitioner filed the present Revision case.

4. The learned counsel for the petitioner submitted that the petitioner is the owner of the vehicle, Yamaha R15 motor bike bearing Registration No.TN 05 CD 5985 and she is not an accused in this case. He further submitted that if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle and that the vehicle is not involved in any case of similar in nature and the petitioner is ready to give appropriate



Crl.R.C.No.877 of 2023

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 [Criminal Side] appearing for the respondent submitted that the petitioner is owner of the vehicle, Yamaha R15 motor bike bearing Registration No.TN 05 CD 5985 and since the above said vehicle was used in selling Ganja illegally, it was seized and hence, he objected to return the vehicle to her. He further submitted that the vehicle is not involved in any previous case of similar nature.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate [Criminal Side] appearing for the respondent and I have perused the materials on record.

7. A perusal of the records shows that, the respondent police



Crl.R.C.No.877 of 2023

registered a case in Crime No.56 of 2023 for the offences under Sections

8[C], read with 20[b], 21[a] of NDPS Act with regard to illegally selling of ganja. The petitioner is not an accused in this case. Further, it reveals from the records that the petitioner is the owner of the vehicle, Yamaha R15 motor bike bearing Registration No.TN 05 CD 5985 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.1703 of 2023, filed by the petitioner, on the ground that the investigation is pending. It is the contention of the learned counsel for the petitioner that 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 Lave Petition (Crl.)2745 of 2022 dated 01.10.2002* wherein the Hon'ble Supreme Court has held that in order to protect the



Crl.R.C.No.877 of 2023

property, the Apex Court has directed to handover the seized articles to the owner on proper Panchnama.

9. Considering the above aspects and also 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, this Court is inclined to allow the Revision Petition.

10. 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 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 Rs.1,00,000/- (Rupees one lakh only) before the learned Principal Special Court under EC & NDPS Act, Chennai and the learned Magistrate shall not insist on production of solvency certificate



Crl.R.C.No.877 of 2023

WEB COPY

- 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 shall 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 she 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.

12.06.2023

Index: Yes/No

Internet: Yes/No



Crl.R.C.No.877 of 2023

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To

1. The Principal Special Court under EC & NDPS Act, Chennai
2. The Inspector of Police,
PEW East, Triplicane Police Station,
Chennai District.
3. The Public Prosecutor, Madras High Court.



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Crl.R.C.No.877 of 2023

V.SIVAGNANAM, J.,

VTC

Crl.RC No.877 of 2023

12.06.2023