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Crl.R.C.No.1654 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1654 of 2023

K.Ganesan

... Petitioner

Vs.

The State Rep. by
Inspector of Police,
PEW-Gummidipoondi,
Kottai Karai,
Thiruvallur.

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed by the Principal Sessions Court under EC & NDPS Act, Chennai in Crl.M.P.No.6060 of 2023 in Crime No.302 of 2023 dated 08.09.2023 as illegal.

For Petitioner : Mr.K.Shankar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

The petitioner who is the owner of Tata Eicher bearing Registration No.TN-93-D-9554 filed a petition seeking return of property before the Principal Sessions Court under EC & NDPS Act, Chennai in Crl.M.P.No.6060 of 2023. The learned Special Judge by order dated 08.09.2023 dismissed the petition. Against which, the present revision petition is filed.

2.The gist of the case is that the respondent police on 18.07.2023 registered a case in Crime No.302 of 2023 for the offence under Sections 8(c) r/w. 20(b)(ii)(C), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Act], wherein it is stated that on 18.07.2023 at about 5.00p.m. the respondent police received information that between 9.00 p.m. to 7.00 p.m. Ganja is being transported in Tata Eicher lorry bearing Registration No.TN-93-D-9554 procured from Andhra Pradesh to hand over the same at Dindigul. On receipt of the information, the respondent police after recording the same and informed the Superior, along



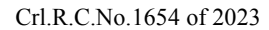
with the informant, witnesses and necessary equipments positioned themselves near Thachoor Junction National Highways at about 7.00 p.m.

The informant identified the vehicle, thereafter the vehicle was stopped and the driver of the vehicle attempted to run away but he was caught. Thereafter, following the procedures, search was conducted and during the search, fibre fish tank measuring 12 feet length and 6 feet breadth was found containing six white polythene bags. When the driver was enquired, he informed that these bags were loaded in Annavaram near Vishakapatnam and gave the details of the persons. Thereafter, he disclosed the names of Deivam, Ilayaraja and Karthick Balu who were involved in the transaction. Later, those bags containing 30 kgs of ganja each, totally 180 kgs were seized from the vehicle. Thereafter, the respondent police reported his higher officials along with the seized articles and the accused and a case was registered.

3.The contention of the learned counsel for the petitioner is that the petitioner is an agriculturist and also doing business in lorry transportation. He purchased Tata Eicher lorry by availing loan from Tata Motors Finance



Ltd., and the vehicle has been hired for transport. On 15.07.2023 the petitioner's vehicle was booked with Balaji Cargo Carrier (South), Howrah, Calcutta wherein FRP Bio Digester Tank was loaded by Saldar Infrastructure and Contracts Pvt. Ltd., West Bengal to deliver the same to Saldar Infrastructure and Contracts Pvt. Ltd., Othakalmandapam, Coimbatore. The petitioner entrusted the vehicle with his Driver Venkatachalam. The petitioner was not aware of his driver's involvement with the other accused and thereby transporting ganja. When the petitioner was called for enquiry, he produced all the relevant documents to the respondent police and also the details about booking of cargo from West Bengal. The respondent police made enquiry and found that the petitioner has no knowledge about the act of his driver who had independently acted on his own. Thereafter, the petitioner filed a petition before the Lower Court for return of vehicle. The Lower Court recorded that the seized lorry of the petitioner has been produced before the Court in B.No.654/2023 and the vehicle was returned to the respondent police for safe custody since there is no proper space for retention of the vehicle in the Court. He would submit that now the vehicle is kept in open space exposing to vagaries of



<https://www.mhc.tn.gov.in/judis>



(iv) Tr.Madhavan – Police Constable – 1003

(v) Tr.Arunachalam – Police Constable – 2503

5.It is submitted that after registration, I have produced A1 before the learned Judicial Magistrate, Gummidipoondi and sent to remand for judicial custody on 19.07.2023.

6.It is submitted that based on the confession statement of A1, on 19.07.2023 I have arrested Deivam [A2] and Illayaraja [A3] and recorded their confession statements in the presence of witnesses and also seized case property i.e., mobile phone of A2 and A3 under cover of seizure mahazar. Later, they produced before the learned Judicial Magistrate, Gummidipoondi and sent to remand for judicial custody on the same day.

7.It is submitted that on 01.08.2023, I have formally arrested A4/Karthick Pal from 01.08.2023 to 03.08.2023 [3 days], while he is in Madurai District, Thadikombbu Police Station Cr.No.224/2022 u/s.8(c), 20(b)(ii)(C), 29(1), 25 of NDPS Act and he produced before the learned Judicial Magistrate Court, Gummidipoondi under P.T. Warrant and remanded into judicial custody. During police custody, I have recorded confession statement of A4 in the presence of witnesses and seized car bearing Regn.No.50-AW-4853 which belongs to A4 under cover of seizure mahazar.



8.It is submitted that on 30.08.2023, I have arrested Jothila Sambamurthy [Bathraiya A5] and recorded confession statement and also seized cell phone under cover of seizure mahazar, then he produced before the said Court. All accused persons A1 to A5 were still in judicial custody.

9.It is submitted that I have produced the seized contrabands and the said lorry bearing Regn.TN-93-A-9554 before the Special Judge, Special Court under EC & NDPS Act, Chennai and the same was taken on file vide A.No.984/2023 dated 26.07.2023 and B.No.654/2023, dated 26.07.2023.

10.It is submitted that on 27.07.2023, I have sent contraband to the Forensic Science Laboratory, Chennai for chemical analysis and the same is yet to be obtained.

11.It is submitted that the specific overtact of the accused persons is as follows:

S.No	Accused	Overtact of the accused persons
1	Venkatachalapathi [A1]	On the date of occurrence, he purchased
2.	Deivam [A-2]	Who arranged money to purchase ganja illegally
3.	Illayaraja [A-3]	Prior to occurrence i.e., 2 days before, accompanied with A-2 and A-4 went to Andhra Pradesh and gave money to A-5 for purchasing ganja illegally



S.No	Accused	Overtact of the accused persons
4.	Karthick Pal [A-4]	Who arranged money to purchase ganja illegally
5.	Jothila Sambamurthy [A-5]	Obtained cash sum of Rs.9 lakhs and supplied ganja to A-1 weighing about 180 kgs at Andhra Pradesh

12.It is submitted that so far investigation, it came to light that the petitioner/K.Ganesan has not involved in this offence and the investigation is pending and still I have to examine some more witnesses including concerned transport authorities in order to unearth the real facts of the case.

13.It is submitted that based on the confession statement of A-1 and A-2 which reveals that on 15.07.2023 A-2 and his friends viz., Illayaraja [A-3], Karthick Balu [A-4] went to Andhra Pradesh through car bearing Regn.No.50-AW-4853 wherein they purchased 180 kgs ganja [worth amount of Rs.9 lakhs] from A-5 Jothila Sambamurthy.

14.It is submitted that at this stage, the petitioner/K.Ganesan who is owner of the said vehicle filed a petition before the Principal Special Court under EC & NDPS Act, Chennai vide Crl.M.P.No.6060 of 2023 u/s.457 Cr.P.C. seeking return of Tata Eicher, bearing Reg.No.TN-



93-D-9554 which was seized by PEW Gummidipoondi in Cr.No.302 of 2023 for an alleged offence u/s.8(c) r/w. 20(b)(ii)(C), 25 & 29(1) of NDPS Act and the same was dismissed on 08.09.2023.”

5.Learned Additional Public Prosecutor further submitted that it is not in dispute that the petitioner is the owner of the lorry and the driver of the lorry had acted on his own along with other accused. He would submit that the petitioner had produced the cargo receipts and the same was verified. He would further submit that the petitioner ought to have acted in a cautious manner and ought not to have allowed the vehicle to be transported with ganja of a huge quantity which is detrimental to the society. He further submitted that the Trial Court had rightly dismissed the petitioner and hence, needs no intervention.

6.Considering the submissions made and on perusal of the materials, it is not in dispute that the petitioner is the owner of the lorry and he produced the RC book, insurance certificate and vehicle permit. It is also seen that the petitioner had produced the invoice of Saldar Infrastructure



and Contracts Pvt. Ltd. to confirm that the tanks were transported from Calcutta to Coimbatore. In the E-way bill produced, the vehicle number has been registered. The Trial Court finding out that though the petitioner is the owner of the lorry, he has not knowledge with regard to the illegal transportation of ganja by his driver along with other accused ought to have returned the vehicle. Further, the petitioner would be linking witness to link A1 and other accused in transport of ganja from Andhra Pradesh to Tamil Nadu. The petitioner undertakes that he will be a witness to this effect and he will support the case of the prosecution. It is also seen that from the earnings derived by letting out the vehicle for transportation, the petitioner was making payment for the loan availed from Tata Motors Finance Ltd., and since the vehicle has been kept idle with the respondent police from 18.07.2023, the petitioner is facing great difficulty to make payments.

7.The vehicle is kept in open space exposing to vagaries of weather, further detention would cause damage to the vehicle, in result, the value of the vehicle will get diminished and vehicle would become immobile. In view of the aforesaid reasons, this court is inclined to set aside the order



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passed by the learned Principal Sessions Judge, Principal Special Court under EC & NDPS Act, Chennai.

8Accordingly, this Criminal Revision Case is allowed and the impugned order dated 08.09.2023 passed by the learned Principal Sessions Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.6060 of 2023 is set aside. In view of the same, the learned Principal Sessions Judge, Principal Special Court under EC & NDPS Act, Chennai is directed to return the vehicle Tata Eicher bearing Registration No.TN-93-D-9554 to the petitioner, on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties each for a like sum to the satisfaction of the learned Principal Sessions Judge, Principal Special Court under EC & NDPS Act, Chennai;

(ii) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove his ownership. The learned Special Judge shall peruse the RC



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book and other records, retain xerox copy of the same and return the same to the petitioner with a view to use the vehicle;

(iii) The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over;

(iv) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the court below.

30.10.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Principal Sessions Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 2.The Inspector of Police,
PEW-Gummidipoondi,
Kottai Karai, Thiruvallur.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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