



Crl.R.C.(MD)No.676 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2023

Pronounced on : 02.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.676 of 2023

Viji

... Petitioner/Petitioner

Vs.

The State rep. by

The Inspector of Police,

Arumanai Police Station,

Kanyakumari District.

(Crime No.77/2023)

... Respondent/Respondent

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.5493 of 2023 dated 03.06.2023 on the file of the learned Judicial Magistrate No.1, Kuzhithurai.



Crl.R.C.(MD)No.676 of 2023

WEB COPY

For Petitioner : Mr.S.Sivakumar
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

ORDER

The Petitioner filed this revision against the dismissal of the order dated 03.06.2023 passed in Cr.M.P.No.5493 of 2023 by the learned Judicial Magistrate No.1, Kuzhithurai. The petitioner filed the petition in Cr.M.P.No.5493 of 2023 under Section 451 Cr.P.C., to seek interim custody of the vehicle namely, Two Wheeler Honda Dio in bearing Registration No.TN 75AL 8303 which has been involved in the illegal transportation of the “Ganja”.

2. The Petitioner is said to have committed offence under Section 8(c) r/w 20(b)(ii)A of the Narcotic Drugs and Psychotropic Substances Act.



Crl.R.C.(MD)No.676 of 2023

WEB COPY

3. According to the prosecution, on 14.05.2023 at 2.00 pm respondent police intercepted the vehicle of the petitioner and found that petitioner found possession of 200 kg. Ganja. Therefore respondent police registered the case petitioner and other accused under Section 8(c) r/w 20(b)(ii)A of the Narcotic Drugs and Psychotropic Substances Act and seized the vehicle and contraband and samples. Thereafter they produced the same before the Court.

4. Petitioner filed the petition under Section 451 Cr.P.C., to seek interim custody of the vehicle namely, Two Wheeler Honda Dio bearing Registration No.TN75AL8303 before the learned trial Judge in Cr.M.P.No.5493 of 2023. The learned trial Judge dismissed the same on the ground that the vehicle was involved in the transportation of the contraband and the cellphone was used for the communication of the transportation of the contraband. Challenging the same, the petitioner filed the present revision.



Crl.R.C.(MD)No.676 of 2023

WEB COPY

5. The learned counsel for the petitioner submitted that petitioner is innocent and he was falsely roped in the case and his vehicle also falsely seized. The vehicle was in the custody of the respondent police without proper maintenance and hence value of the property is diminished. He placed reliance on the judgment of Hon'ble Supreme Court reported in ***2002(10)SCC283 [Sunderbhai Ambalal Desai v. State of Gujarat]*** and seeks the interim custody. He further submitted that the learned trial Judge dismissed the petition only on ground that the vehicle was involved in the transportation of the contraband and the cellphone was used for the communication of the transportation of the contraband and the same was not a reason to dismiss the petition.

6. The learned Additional Public Prosecutor submitted that as per the judgment of this Court in **Crl.R.C.(MD)No.41 of 2019 (Nahoorkani Vs. State)** the petition under Section 451 Cr.P.C, is not maintainable in view of the specific bar under Sections 60, 61, 62, 63 of the NDPS Act. He further submitted that as per Rule 257 of the Madras High Court Criminal Rules of Practice, when there is a bar to release the vehicle in



Crl.R.C.(MD)No.676 of 2023

the Special Act, the petition under Section 451 Cr.P.C., is not maintainable. Hence, the order of dismissal passed by the learned trial Judge need not be interfered.

7. This Court has considered the rival submissions made by the both side counsel and perused the records.

8. The petitioner's vehicle bearing registration No.TN75AL8303 was seized by the respondent police along with 200 kg. of “Ganja”. The learned trial Judge dismissed the petition on the ground that the vehicle was involved in the transportation of the contraband and the cellphone was used for the communication of the transportation of the contraband. The said reasoning of the learned trial Judge is in accordance with law.

9. Apart from that as rightly pointed out by the learned Additional Public Prosecutor, the petition under Section 451 Cr.P.C., to seek the interim custody of the vehicle is not maintainable. The same was elaborately dealt by this Court Crl.R.C.(MD)No.41 of 2019 and learned



Crl.R.C.(MD)No.676 of 2023

Single Judge of this Court held as follows:-

“12. Further, the provision under Section 63 of the NDPS Act is clear that the decision regarding confiscation had got to be taken during the trial and not after it and the right of the State to confiscate the conveyance and articles or things seized under this Act is irrespective of the result of the trial. In view of the provision under Section 63 of the Act, the provisions of the Code of Criminal Procedure as contained in Sections 451 and 452 will stand modified to the extent and any claimant to the property will be obliged to satisfy the Court in terms of the exceptions carved out in Sections 60, 61 and 62 of the NDPS Act before he is returned the custody of the vehicle taken into consideration when it was being used for transporting a narcotic substance. Therefore, when the conveyance is seized under the NDPS Act, the return of property does not arise as



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Crl.R.C.(MD)No.676 of 2023

contemplated under Sections 451 and 452 of Cr.P.C and it is liable to be confiscated under Section 63 of the NDPS Act. The Magistrate may not have jurisdiction to entertain a petition filed under Section 451 of Cr.P.C in the light of the Special Rule made under Section 52A of the Act.

13.In fact, Section 63 of the Act had provided for a procedure in making confiscations. It gives the power to the Court to decide whether any article or thing seized under the Act is liable to be confiscated in terms of Sections 60, 61 or 62 of the Act. Before the amendment to Section 52A, the conveyance was not included as an item which should be seized and disposed of. The very fact that conveyance had been incorporated in the amendment itself indicates that the Government intended to provide a special procedure to deal with such conveyance, while taking into account the fact that most of the transportation is



WEB COPY



Crl.R.C.(MD)No.676 of 2023

done in conveyances which itself is defined under Section 2(viii) as meaning “a conveyance of any description whatsoever including any aircraft, vehicle or vessel”. Therefore, if any vehicle is involved in the transportation of narcotic drug, psychotropic substance or controlled substance, such vehicles also could be seized and disposed of in terms of Section 52A(1) of the Act.

10. In view of the transportation of the contraband in the vehicle, as per the above provision under the NDPS Act and the decision of this Court rendered in Crl.R.C(MD)No.41 of 2019, this Court holds that petition under Section 451 Cr.P.C., to seek the interim custody is not at all maintainable. Hence, the order dated 03.06.2023 in Crl.M.P.No.5493 of 2023 passed by the learned Judicial Magistrate No.1, Kuzhithurai, is hereby confirmed.



Crl.R.C.(MD)No.676 of 2023

WEB COPY

11. Accordingly, this Criminal Revision Case is dismissed.

Considering the involvement of 200 kg of 'Ganja', this Court is inclined to issue a direction to the learned Judicial Magistrate, Kuzhithurai to dispose of the case in STC.No.784 of 2023 within a period of two months from the date of receipt of a copy of this order. The petitioner is at liberty to file a petition to seek for custody of the vehicle after the outcome of the trial, in accordance with law.

02.11.2023

Internet: Yes/No

Index : Yes/No

PJL

To

1. The Judicial Magistrate No.1,
Kuzhithurai.
2. The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Page No.9/12



WEB COPY



Crl.R.C.(MD)No.676 of 2023

K.K.RAMAKRISHNAN,J.

PJL

**Pre-delivery Order made in
Crl.R.C.(MD)No.676 of 2023**

02.11.2023



Crl.R.C.(MD)No.676 of 2023

WEB COPY

Crl.RC.(MD).No.676 of 2023

K.K.RAMAKRISHNAN,J.

The matter is listed today under the caption “for being mentioned” at the instance of the learned counsel appearing for the petitioner.

2.The learned counsel for the petitioner submitted that there is typographical error occurred while typing the quantity of Ganja “200 Kgs” instead of “200 grms” in Paragraph Nos.3, 8 and 11 and hence, the same may be corrected.

3.In view of the above, the Registry is directed to issue fresh order copy, after correcting the quantity of Ganja as “200 gms” in Paragraph Nos.3, 8 and 11 in the order dated 02.11.2023.

30.11.2023

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Page No.11/12



WEB COPY



Crl.R.C.(MD)No.676 of 2023

K.K.RAMAKRISHNAN,J.

Sbn

Crl.R.C.(MD).No.676 of 2023

30.11.2023

2/2