



CrI.R.C.No.310 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.310 of 2024

R.Santhoshkumar

... Petitioner

Vs.

State rep by
The Inspector of Police,
M-4 Redhills Police Station,
Thiruvallur District.
(In Crime No.332/2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order dated 20.09.2023 made in CrI.M.P.No.6667 of 2023 on the file of the Principal Special Court under EC and NDPS Act, Chennai-104.

For Petitioner : Mr.S.Angamuthu

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER



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The petitioner filed a petition in Crl.M.P.No.6667 of 2023 in Crime No.332 of 2023 seeking return of vehicle viz., Bajaj Auto bearing registration No.TN-18-AV-7299, which was seized by the respondent Police in Crime No.332 of 2023 for offences under Sections 8(c), 20(b)(ii)(B), 25 & 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 20.09.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The learned counsel for the petitioner submitted that the petitioner purchased an auto bearing Reg.No.TN-18-AV-7299 in the year 2019 by availing finance from Bajaj Finance Limited. The petitioner lent out his Auto to the drivers and collects rent, thereby sustaining himself and also making payments to the Financier. The vehicle is said to have searched by the respondent police, at that time, 1.200 kgs of ganja was found in the Auto and the accused/A1 & A2 were arrested. He would submit that A2 is the petitioner's father and he has got nothing to do with the activities of his



father. It is submitted that the vehicle is kept in open space exposing to vagaries of weather, further detention of vehicle would make the vehicle unusable, rusted and it would become a scrap. The petitioner is ready to comply with any condition that this Court may impose while granting return of vehicle. Added to it, it is also constrained to make the monthly EMI to the financier. Hence, he prays for return of property.

3.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that on 02.05.2024 at about 10.30 hours, when the Special Sub Inspector of Police was in station duty, at that time, he received a secret information about illegal transport of Narcotic substances. Thereafter, he went to the scene of occurrence, i.e. Nearby Sothupakkam Erikarai along with the Police team. At that time, two unknown persons were standing with an auto bearing registration No.TN-18-AV-7299. On seeing the police, they tried to escape, the respondent police caught hold of them and conducted search and found in possession of 1.200 kgs of ganja from a1 and A2. Thereafter, the FIR in Crime No.332 of 2023 registered for offence under Sections 8(c), 20(b)(ii)(B), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985, samples were taken



and sent for chemical analysis. Hence, prays for dismissal.

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4.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner is not an accused in this case. It is further seen that from the date of seizure, 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. Added to it, the Apex Court in the case of *Sainaba vs. The State of Kerala and another in Criminal Appeal No.2005/2022 [SLP (CRL.) No.72080/2022]* by following the judgment of the Apex Court in the case of “*Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 283*” released the vehicle which was involved in the NDPS Act. Further, the learned Additional Public Prosecutor objected return of property by referring to the order of this Court in Crl.R.C.(MD).No.41 of 2019 dated 16.06.2023, but it is seen that in the said order, the decision of the Apex Court in *Sainaba's* case has not been referred to. In view of the decision of the Apex Court on this point as laid down which is binding under Article 141 of the Constitution of India, this Court is inclined to allow return of property.



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5. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 20.09.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.6667 of 2023 in Crime No.332 of 2023 is set aside. In view of the same, the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai is directed to return the auto bearing Bajaj Auto bearing registration No.TN-18-AV-7299, on the following conditions:-

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

(ii) The petitioner shall produce the original RC Book along with self attested photostat copy of RC Book of the vehicle and other relevant records to prove his ownership. The learned Principal Special Judge shall peruse the RC book and other records, retain xerox copy of the same and return the original RC book to the petitioner;



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(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 produce the vehicle as and when required by the respondent and by the court below.

26.03.2024

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

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To

- 1.The Inspector of Police,
M-4 Redhills Police Station,
Thiruvallur District.
- 2.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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