



Crl.R.C.No.247 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.NIRMAL KUMAR**

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Tamilselvi

.. Petitioner

Vs.

State rep by
The Inspector of Polce,
PEW Chengalpattu Unit,
Chengalpattu,
Crime No.553/2023

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.9607 of 2023 dated 23.01.2024 on the file of the Principal Special Court for EC & NDPS Act Cases at Chennai.

For Petitioner : M/s.M.S.Ramesh
For Respondent : Mr.K.Gangadaran

ORDER

This Criminal Revision Case is filed to set aside the order passed in Crl.M.P.No.9607 of 2023 dated 23.01.2024 on the file of the Principal Special Court for EC & NDPS Act Cases at Chennai.



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2. The petitioner is the owner of Wagonr Car bearing Registration No.TN-22-DD-2971, which was seized by the respondent police in Crime No.553 of 2023 for the offence under Section 8(c) r/w.20(b)(ii)(B) of the NDPS Act. The petitioner has filed a petition for return of property before the trial Court in Crl.M.P.No.9607 of 2023 before the Principal Special Court under EC & NDPS Act, Chennai and the same was dismissed on 23.01.2024. Against which, the present Criminal Revision Case is filed.

3. The contention of the petitioner is that the petitioner's son Kalaiarasan, who is the student of SRM Institute of Science and Technology, Kattankulathur, Chengalpattu District studying B.Tech (Information Technology). On 30.11.2023, the respondent police registered a case against the petitioner's son Kalaiarasan and one Shek Kadhar for offence under Section 8(c), 20(b)(ii)(B) of NDPS Act, 1985 stating that on secret information came to know that the petitioner's son and one Shek Kadhar were found in possession of 1.5 kgs of Ganja. She further contended that the petitioner's son falsely implicated in this case.



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The respondent police not properly conducted the investigation.

4. The petitioner submission is that the petitioner's son is a college student and other accused is also his class mate. The petitioner purchased the car for her own use and for her regular medical treatment. She uses the vehicle to visit doctor, for scan treatment and to attend other works. The petitioner's son took the vehicle to his college, to collect hall ticket for examination and the petitioner not aware what had happened there and now her car is seized. The learned counsel further submitted that the petitioner undertakes to file an affidavit before the Court below to the effect that the vehicle will not be used for any act of violation of law. Hence, she prayed for setting aside the impugned order.

5. The learned Additional Public Prosecutor appearing for the respondent Police submitted that if the vehicle is returned to the petitioner, there are every chances to use it for committing similar type of offence. Hence, strongly objected the present revision.



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6. Considering the submission and on perusal of the materials, it is seen that the petitioner is the owner of the above said car which is not disputed. It is seen that from the date of registration of FIR, the vehicle is kept in open space exposing to vagaries of weather and thereby, the value of the vehicle is getting diminished. 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 Government Advocate (Crl. Side) 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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7. In view of the aforesaid reasons, this court is constrained to set aside the order passed by the learned Principal Special Court for EC & NDPS Act Cases at Chennai in Crl.M.P.No.9607 of 2023, dated 23.01.2024 and the Criminal Revision Case is allowed.

8. The learned Principal Special Court for EC & NDPS Act Cases, Chennai is directed to return the Wagonr Car bearing Registration No.TN-22-DD-2971 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 Special Judge For NDPS & EC Act at Chennai;

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



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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.

06.03.2024

Internet : Yes/No

Index: Yes/No

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To

1.The Principal Special Court for EC & NDPS Act Cases at Chennai.

2. The Inspector of Polce,
PEW Chengalpattu Unit, Chengalpattu.

3.The Public Prosecutor,
High Court of Madras,
Chennai.



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M.NIRMAL KUMAR, J.

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