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Crl.R.C.No.334 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.334 of 2024

Sangeetha

... Petitioner

Vs.

STATE: rep by

The Inspector of Police,
R-2 Kodambakkam Police Station,
Chennai.

(In Crime No.167/2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order dated 21.12.2023 in Crl.M.P.No.9141 of 2023 passed by the Principal Special Court under EC and NDPS Court at Chennai and to direct the respondent to return the property Auto (Bearing Reg.No.TN 09 CS 3949) to the petitioner seized in crime No.167 of 2023 on the file of respondent Police by allowing the criminal revision petition filed by the petitioner.

For Petitioner : Mr.A.Veeran

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

ORDER

The petitioner filed a petition in Crl.M.P.No.9141 of 2023 in Crime No.167 of 2023 seeking return of vehicle viz., Auto bearing registration



No.TN-09-CS-3949, which was seized by the respondent Police in Crime No.167 of 2023 for offences under Sections 8(c), 20(b)(ii)(B) & 25 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 21.12.2023 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 is not an accused in this case. The petitioner purchased an auto bearing Reg.No.TN-09-CS-3949 in the year 2019 by availing finance from V.K.Finance. The petitioner was letting out the auto on rent and she was surviving and running the family on its rental income. On some of the days, the petitioner's husband used to take the auto for short trips. This being so, on 18.08.2023, the petitioner's husband was riding the auto, the vehicle was intercepted by the respondent Police and they had conducted a search in the auto, a black colour polythene cover containing 1.200 kgs of ganja seized. Thereafter, the petitioner was arrested and the auto seized. He further



submitted that the petitioner had enquired her husband and found that husband not aware about placing of ganja and the same may be brought by one of the passengers travelled in the auto and kept the bag in the rear. It is also seen that her husband explained to the respondent Police, but the Police not considered the same. It is not the case of the respondent Police that the black colour polythene containing ganja was concealed in the auto and it was kept in open in the rear of auto. He further submitted ten days prior, her husband passed away due to heart attack, her only source of income, is hiring of auto. 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 18.08.2023, when the Sub Inspector of Police along with the Police team had gone to the scene of



occurrence. At that time, one suspicious person standing on the place with auto bearing Reg.No.TN-09-CS-3949 found. On seeking the Police, the person tried to escape from that place. The respondent Police searched the auto and found 1.200 kgs of ganja from the auto. Immediately, the respondent Police arrested the accused, husband of the petitioner and obtained confession statement, which reveals that the accused tried to sell ganja in the local area for his personal gain. The respondent Police seized the auto and one mobile phone REDMI and arrested the accused. Thereafter, the FIR in Crime No.334 of 2023 registered for offence under Sections 8(c), 20(b)(ii)(B) & 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, samples were taken and sent for chemical analysis. Hence, prays for dismissal.

4.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner is not arrayed as an accused in this case and her husband, who is arrayed as accused, used the vehicle. Now, the petitioner's husband passed away. It is 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.

5. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 24.08.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in



Crl.R.C.No.334 of 2024

Crl.M.P.No.9141 of 2023 in Crime No.167 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 Reg.No.TN-09-CS-3949, on the following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with one surety 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 her 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;

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



Crl.R.C.No.334 of 2024

(iv) The petitioner shall also give an undertaking that she will produce the vehicle as and when required by the respondent and by the court below.

04.03.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

vv2

To

- 1.The Inspector of Police,
R-2 Kodambakkam Police Station,
Chennai.
- 2.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.334 of 2024

M.NIRMAL KUMAR, J.

vv2

Crl.R.C.No.334 of 2024

04.03.2024