



Crl.R.C.No.364 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.364 of 2024

Gokul

... Petitioner

Vs.

State: Inspector of Police,
PEW Gummidipoondi Unit,
(Crime No.419 of 2023)

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed by the learned Special Judge for EC and NDPS Act Cases, Chennai in Crl.M.P.No.409 of 2024 dated 31.01.2024.

For Petitioner : Mr.R.Simon David

For Respondent : Mr.S.Rajkumar
Additional Public Prosecutor.

ORDER

This petition has been filed to set aside the order passed by the learned Special Judge for EC and NDPS Act Cases, Chennai in Crl.M.P.No.409 of 2024 dated 31.01.2024.



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2. The petitioner is A3 in Crime No.419 of 2023 for the offence under Sections 8(c), 20(b)(ii)(B), 29(1) and 25 of NDPS Act, and he was arrested by the respondent Police on 03.11.2023 along with three others. All the accused were in possession of 3 Kgs of ganja and from the petitioner a mobile phone of One plus brand with IMEI No.861871060109131 and a Pulsar NS 200 Bike bearing Reg.No.TN18-AW-0948 were seized. Therefore, the petitioner filed return of the property before the Trial Court in Crl.MP.No.409 of 2024 and the Trial Court by order dated 31.01.2024 dismissed the same, as against which, the present Revision Case is filed.

3. The contention of the petitioner is that the petitioner is a graduate employed in NGO and doing service to the Society and his mobile phone and bike are very much required to contact various persons to coordinate and carry out his daily work. Further, contact list and bank details are all are recorded in the mobile phone and due to seizure and detention of the mobile phone, the petitioner is unable to carry out any transaction, which cause much hardship to him. If the phone is kept idle without any usage would make the phone unusable.



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4. The learned Additional Public Prosecutor filed a counter and submitted that on 03.11.2023 at about 13.00 hours, the Sub Inspector of Police received a secret information about illegal transport of Narcotic Substances. Subsequently, a Police team went to the scene of occurrence, wherein the petitioner and other three accused were standing on that place. On search it was found that the accused possessed 12 kgs of ganja and they were seized. Immediately, all the accused were arrested and also seized two wheeler and mobile phones from them under the cover of seizure of mahazar in the presence of witnesses. On the same day, the accused were produced before the District Munsif-cum-Judicial Magistrate, Gummidipoondi and remanded into judicial custody.

5. He further submitted that during pending investigation, the petitioner herein filed a petition before the Principal Special Court under EC & NDPS Act Cases, Chennai for return of mobile pone and pulsar NS 200 bike and the same was dismissed on 31.01.2024. Challenging the same, the present Criminal Revision Petition is filed.



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6.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner is arrayed as A3 in this case. 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 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. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 31.01.2024 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.409 of 2024 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 One plus phone with IMEI No.861871060109131 and the Pulsar NS 200 Bike bearing Reg.No.TN18-AW-0948 to the petitioner, on the following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.5,000/- (Rupees Five 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;



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

14.03.2024

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

pvs

To

- 1.The Inspector of Police,
PEW Gummidipoondi Unit.
- 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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