



Crl.R.C.No.391 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.391 of 2024

Nithiyakala

... Petitioner

Vs.

The State of Tamil Nadu
Rep. by the Inspector of Police,
PEW, Washermenpet Unit

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order in Crl.M.P.No.947 of 2024 dated 06.02.2024 in Crime No.223 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.K.Yuvaraja

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



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ORDER

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The petitioner filed a petition in Crl.M.P.No.947 of 2024 seeking return of Mobile Phone Vivo Y 35, which was seized by the respondent Police in Crime No.223 of 2023 for offences under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 06.02.2024 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that the petitioner is the owner of the mobile phone [Vivo Y 35]. She had purchased the mobile phone on 15.10.2022. Her mobile phone [Vivo Y 35] which was used by her brother Baskar, who is arrayed as Sole Accused in the above case, was seized by the respondent police on 01.08.2023. The petitioner later came to know that her brother Baskar was arrested in connection with Crime No.223 of 2023 for possession of 4 Kgs of ganja. The petitioner is not an accused and she is nothing to do with his brother's activities in the above case. The petitioner, who is a student, has been using her mobile phone for her online classes and



other training programmes and also for her banking purpose. The petitioner's brother used her mobile phone for a short while but under mysterious circumstances, her brother was arrayed as accused in the above case and he was arrested. At that time, the petitioner's mobile phone was seized as case property but the said mobile phone was not used in any crime. Further, due to retention of mobile phone the petitioner is unable to attend the online classes, carry her routine transactions and contact her relatives and friends whose details are stored in the mobile phone. Further, the petitioner undertakes that as and when required she shall produce the mobile phone and also undertakes that the details in the phone would not be tampered with. The petitioner would further submit that keeping the mobile phone unused for a long time would become redundant. Hence, prayed for return of mobile phone.

3.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that on 01.08.2023, at about 8.00 a.m., the Sub Inspector of Police attached to the respondent Police was on duty, he received secret information about the illegal transportation of



ganja, then he along with the Police team went to the place of occurrence i.e., Koruukupet Railway Station near Thiyagappa Street Auto Stand where an unknown person was standing suspiciously. Immediately, the respondent Police caught the accused and informed him about their rights. The respondent Police conducted search and found 4 kgs of ganja in his possession. Thereafter, the respondent Police arrested the accused, recorded confession statements in the presence of the witnesses, seized the contraband and mobile phone under the seizure mahazar and FIR in Crime No.223 of 2023 for offence under Sections 8(c) r/w. 20(b)(ii)(B) of the NDPS Act registered against the accused on 01.08.2023 and the same was forwarded to the Inspector of Police for further investigation and then the accused was remanded to judicial custody. Further, the seized contraband and the seized materials produced before the Principal Special Court under EC & NDPS Act, Chennai and the samples of the contraband sent for chemical analysis.

4.He further submitted that the petitioner/owner of the mobile phone and sister of Accused filed a petition before the Court below in



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Crl.M.P.No.947 of 2024 under Section 451 of Cr.P.C., seeking return of a mobile phone (Vivo Y 35) and the same was dismissed on 06.02.2024.

Challenging the same, the present Criminal Revision Case has been filed. He further submitted that the Accused/Baskar is having a previous case in Crime No.78/2023 in Melavalasu Police Station for the offences under Sections 397 and 395 of IPC. In view of the above, he prays for dismissal of the criminal revision case.

5.Considering the submissions made and on perusal of the materials available on record, it is admitted that the petitioner is not an accused in this case. Further, the petitioner is a student and she is using her mobile phone for her educational and other purpose. 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



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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.

6. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 06.02.2024 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.947 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 mobile phone [Vivo Y 35] to the petitioner, on the following conditions:-

(i) The petitioner shall execute a 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;



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

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Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

srm

To

- 1.The Inspector of Police,
PEW Washermenpet Unit,
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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M.NIRMAL KUMAR, J.

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