



Crl.R.C.No.388 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

Crl.R.C.No.388 of 2024

T.Murugan

... Petitioner

Vs.

State rep by
The Inspector of Police,
Sholavaram Police Station,
Avadi City.
(In Crime No.878/2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.775 of 2024 dated 07.02.2024 on the file of the Principal Special Court under EC and NDPS Act, Chennai-104 in Crime No.878 of 2023 on the file of the respondent police and to direct the Court below to return the vehicle i.e. Registration No.TN-18-BA-3110 and Chassis No.MD2B19BY3KWJ24254 in Crime No.878 of 2023 on the file of the respondent police.

For Petitioner : Mr.P.Saravanan
For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

The petitioner filed a petition in Crl.M.P.No.775 of 2024 in Crime No.878 of 2023 seeking return of vehicle viz., Bajaj Auto bearing registration No.TN-18-BA-3110, which was seized by the respondent Police in Crime No.878 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 07.02.2024 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-BA-3110 in the year 2020 by availing finance from Bajaj Finance. The case projected against the petitioner is that on 05.11.2023, the petitioner/A1 is chatting with A2/Saravanan by sitting in an Auto bearing registration No.TN-18-BA-3110. The respondent police on prior information, identified by the



informer, enquired the petitioner and seized 5 packets of ganga each weighing 5 grams. Thereafter, the petitioner was arrested and the auto seized. He further submitted that the petitioner has been falsely implicated in this case and no contraband was seized from the 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 05.11.2023 at about 23.30 hours when the 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. Near Karanodai Auto Stand, Sholavaram along with the Police team. They conducted search in an auto bearing registration No.TN-18-BA-3110



parking suspiciously and found 25 grams of ganja in the auto. The respondent police arrested A1/petitioner and A2, recorded their confession statement and seized the contraband under the cover of seizure mahazar in the presence of witnesses. Based on the confession statement of accused, the respondent police conducted search in the Dost vehicle bearing registration No.Tn-18-BC-3598 and found seized 1.200 kgs of ganja. Thereafter, the FIR in Crime No.878 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 no contraband was seized from the vehicle. 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.

5. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 07.02.2024 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.775 of 2024 in Crime No.878 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-BA-3110, on the following conditions:-



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(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;

(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
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- 1.The Inspector of Police,
Sholavaram Police Station,
Avadi City.
- 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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