



Crl.R.C.No.1937 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1937 of 2023

K.Vellammal

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
PEW-Madhavaram Police Station,
Crime No.213 of 2022

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed by the learned Principal Special Court under EC & NDPS Act, Sessions Judge, Chennai-600104 in Crl.M.P.No.1299 of 2023 dated 10.03.2023 and to pass an order directing the respondent to return bike bearing registration No.TN-18-AU-2886 seized in Crime No.213 of 2022 to the petitioner.

For Petitioner : Mr.S.Mohan Raj

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)



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ORDER

The petitioner is the owner of the two wheeler Hondo Dio, bearing Registration No.TN-18-AU-2886, which was seized by the respondent Police in Crime No.213 of 2022 for offences under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act. The petitioner filed a petition seeking return of property in Crl.M.P.No.1299 of 2023 before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 10.03.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that the petitioner purchased the motor bike for her own use by availing finance from Indusind Bank Limited. The petitioner uses the vehicle for her day-to-day activities. In this case, the petitioner's son, who was arrayed as accused in the above case, took the vehicle for a short while. The petitioner is not aware about the friendship of his son with A2/Anand and his other activities. According to



the petitioner, her son himself has been caught in the web due to his unwanted friendship. It is submitted that the vehicle is kept in open space exposing to vagaries of weather, further detention 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. Hence, he prays for return of property.

3.The Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that on 23.12.2022, at about 03.30 p.m., when the Special Sub Inspector of Police was on station duty, he received secret information about the illegal sale of ganja. Then he along with the Police team went to the place of occurrence i.e., Kavankarai nearby fish market wherein conducted a search. At that time, the accused persons A1 and A2 were standing there along with Ganja by two wheeler Honda Dio black color bearing Reg.No.TN-18-AU-2886. On seeing the Police, A2 escaped from the place and A1 was arrested and recorded his confession statement, contraband was seized along with two wheeler under seizure mahazar in presence of witnesses. Thereafter, an FIR in Crime No.213 of



2022 for offence under Sections 8(c), 20(b)(ii)(B) of the NDPS Act against the accused persons registered on 23.12.2022 and the same was forwarded to the Inspector of Police for further investigation. Thereafter, the accused were sent to judicial custody on 23.12.2022 and the seized contraband and the two wheeler produced before the Principal Special Court under EC & NDPS Act, Chennai. Then, the Inspector of Police sent the samples of contraband to the Forensic Lab, Chennai for chemical analysis on 20.01.2023 and the same was obtained on 27.03.2023. On collection of evidence and materials, charge sheet filed and the same was taken on file in C.C.No.760 of 2023 dated 01.09.2023.

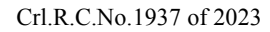
4.He further submitted that the petitioner, mother of A1 filed a petition before the Court below in Crl.M.P.No.1299 of 2023 seeking return of vehicle Honda Dio bearing registration No.TN-18-AU-2886 and the same was dismissed on 10.03.2023. Challenging the same, the present Criminal Revision Case has been filed. He further submitted that this Court in Crl.R.C(MD)No.41 of 2019, dated 16.06.2023 had given directions to the Special Court with regard to disposal of the conveyance articles seized



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under the NDPS Act. 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 seen that the petitioner is not arrayed as an accused in this case and her son, who is arrayed as accused, used the vehicle. 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





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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;

(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.

28.02.2024

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

cse/vv2

To

- 1.The Inspector of Police,
PEW-Madhavaram Police Station.
- 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.

cse

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