



Crl.R.C.No.1621 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1621 of 2023

Clara Betsy

... Petitioner

Vs.

The Inspector of Police,
S-16 Semmancherry Police Station,
Chennai.
Crime No.277/2022.

... 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.5919 of 2023 dated 24.08.2023 in Crime No.277 of 2022 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.S.Apunu

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



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ORDER

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The petitioner filed a petition in Crl.M.P.No.5919 of 2023 seeking return of I Phone 13, which was seized by the respondent Police in Crime No.277 of 2022 for offences under Sections 8(c) r/w 20(b)(ii)(B), 25 and 29(1) 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 24.08.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that the petitioner is not an accused in the above case. Her mobile phone [I Phone 13] which was used by her son, who is arrayed as A1 in the above case, was seized by the respondent police on 21.10.2022. The petitioner used her mobile phone for all her online transactions and also for her banking purpose. The petitioner's son used her mobile phone for a short while but under mysterious circumstances, her son was arrayed as accused along with three others 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 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. Hence, prayed for return of mobile phone.

3.The Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that on 22.10.2022, at about 4.30 p.m., the Sub Inspector of Police attached to the respondent Police was on 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., Palmuneeswaran Kovil, Semmanchery wherein conducted a vehicle search, at that time, the informer identified A1 to A4 who are all came in four wheeler Honda City bearing registration No.TN 59 AD 4159. After seeing the respondent Police, the accused tried to escape, but the respondent Police caught the accused and informed them about their rights. The respondent Police conducted search and found 4.4 kgs of ganja in their possession (each



accused person was found to be in possession of 1.1 kg of ganja).

Thereafter, the respondent Police arrested the accused, recorded their confession statements in the presence of the witnesses, seized the contraband, mobile phone, two four wheelers and one two wheeler under the seizure mahazar and FIR in Crime No.277 of 2022 for offence under Sections 8(c), 20(b)(ii)(B), 25 and 29(1) of the NDPS Act registered against the accused on 21.10.2022 and the same was forwarded to the Inspector of Police for further investigation and then the accused were 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 wife of A2 already filed a petition for return of vehicle viz., Honda City bearing Reg.No.TN 19 H 2404 before the learned Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.6126 of 2022 and the same was dismissed on 09.01.2023. Challenging the same, a revision was filed before this Court and the same was allowed on 03.07.2023 in Crl.R.C.No.1166 of 2023. At this stage, the



petitioner/owner of the vehicle and mother of A1 filed a petition before the Court below in Crl.M.P.No.5919 of 2023 under Section 451 r/w 457 of Cr.P.C., seeking return of a mobile phone (I Phone 13) and the same was dismissed on 24.08.2023. 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 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 admitted that the petitioner is not an accused in this case. Further, A2 in this case already filed a petition seeking return of his car Honda City Car bearing registration No.TN-19-M-2404 in Crl.RC.No.1166 of 2023 and this Court by order dated 03.07.2023 ordered return of property to A2. 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.

6.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.M.P.No.5919 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 mobile phone I Phone 13 to the petitioner, on the following conditions:-



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(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;

(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.

28.02.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

cse/vv2

To

- 1.The Inspector of Police,
S-16 Semmancherry 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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M.NIRMAL KUMAR, J.

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