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Crl.RC.No.1650 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.RC.No.1650 of 2023

Rakesh

... Petitioner

Vs.

State Rep. by,
Inspector of Police,
NIB-CID Police Station,
Vyasarpadi, Chennai-600 039.
(Crime No.19 of 2023)

... Respondent

PRAYER: Criminal Revision case filed under Sections 397 & 401 of Cr.P.C. to call for the entire records relating to the order dated 17.08.2023 in Crl.M.P.No.5525 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai and set aside the same.

For Petitioner : Mr.R.Kisoth Kumar

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



Crl.RC.No.1650 of 2023

WEB COPY

ORDER

Challenging the dismissal order passed by the Principal Special Court under EC & NDPS Act, Chennai, in Crl.M.P.No.5525 of 2023, dated 17.08.2023, the present criminal revision petition has been filed by the petitioner seeking interim custody of the seized phone viz., Redmi Note 5 Pro Mobile, which is in the custody of the respondent in Crime No.19 of 2023 for the alleged offences punishable under Section 8(c) r/w 22(b) of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act').

2. The case of the petitioner is that, the petitioner is the owner of the phone viz., Redmi Note 5 Pro Mobile, and the phone has been seized in Crime No.19 of 2023 by the respondent, for the alleged offences punishable under Section 8(c) r/w 22(b) of NDPS Act. The phone is no way connected with the alleged crime as contended by the respondent Police and seeking interim custody, miscellaneous petition was filed before the trial Court and the trial Court dismissed the petition. Challenging the same, the present criminal revision petition is filed.



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3. Learned counsel for the petitioner submitted that admittedly, the petitioner is the owner of the phone and on the allegation that the phone was involved in trafficking contraband, the phone has been seized. The petitioner, being the owner of the property, is no way connected with the said trafficking and he has been falsely implicated in the case. Therefore, the petitioner filed petition under Section 457 of Cr.P.C. for interim custody of the mobile phone, pending trial, which has since been dismissed, leading to the filing of the present revision petition. Learned counsel further submits that the petitioner is ready to comply with any conditions imposed by this Court and, accordingly, prays for allowing the criminal revision petition.

4. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent submits that the said phone is involved in Crime No.19 of 2023 for the offences punishable under Section 8(c) and 22(b) of NDPS Act and further if the property is returned to the petitioner, it may affect the investigation and, therefore, the claim of the petitioner for return of mobile phone has been rightly rejected by the Court below and, therefore, no



Crl.RC.No.1650 of 2023

interference is warranted with the said decision and accordingly, seeks dismissal of the present revision.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record and the various provisions of law, which have a bearing on deciding the issue as also the decision relied on by the learned Government Advocate.

6. The genesis of the present case is that the petitioner was found to be in possession of 50 grams of Cocaine, when he was apprehended by the law enforcing agency and, the phone was used for the purpose of perpetrating the crime and, therefore, the phone was seized. Pending trial, petition for interim custody of the phone was filed, which has been rejected against which the present revision has been preferred.

7. The short question that arises for consideration is – *Whether the petitioner is entitled for interim custody of the phone.*



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8. Similar issue fell for consideration before the Madurai Bench of this Court in ***Mohammed Shan Vs. The State (Crl.RC (MD) No.116 of 2024 – Dated 8.2.2024)***, wherein, this Court, after discussing the various provisions of law as also the decision of a Co-ordinate Bench of this Court in ***Nahoorkani – Vs – The State (Crl.R.C.(MD)No.41 of 2019– 16.06.2023)*** and other relevant materials, had held as under :-

“13. Section 451 Cr.P.C. relates to disposal of property and order for custody pending trial in certain cases. The said provision provides that where any property is produced before the Court in the course of a trial, the Criminal Court may make such order as it thinks fit for the proper custody of such property pending conclusion of the inquiry. The relevant provision is quoted hereunder :-

“451. Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.-For the purposes of this section, "property" includes-



(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

14. There could be no quarrel with the fact that a property, which is seized in the course of investigation which is alleged to have been used in the commission of an offence, return of the property could be sought for by invoking the power u/s 451 Cr.P.C. and the trial court, if it thinks fit, for the proper custody of such property pending conclusion of the inquiry or trial and if the property is subject to speedy and natural decay, after recording such evidence, as it thinks necessary, order it to be sold or otherwise disposed of. From the above, it is evident that it is within the domain of the trial court to appreciate the necessity for either holding or returning the vehicle, including disposal of the same, pending inquiry or trial.

** * * * **

*16. There could be no quarrel with the fact that the special enactment will have a march over the general enactment, as the Criminal Procedure Code is a compilation of procedures in general instances, whereas the NDPS Act is a special enactment to deal with narcotic and psychotropic substances and such other substances. As stated above, a special enactment prevails over the general enactment. The said ratio has been reiterated by the Apex Court in **Suresh Nanda – Vs – CBI (2008 (3) SCC 674)**, wherein the Apex Court held thus :-*

“8. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 of the Cr.P.C. authorizes the Court to impound



document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special act, the rule that general provision should yield to the specific provision is to be applied. See : Damji Valaji Shah & another Vs. L.I.C. of India & others [AIR 1966 SC 135]; Gobind Sugar Mills Ltd. Vs. State of Bihar & others [1999(7) SCC 76]; and Belsund Sugar Co. Ltd. Vs. State of Bihar and others [AIR 1999 SC 3125].

9. The Act being a specific Act whereas Section 104 of Cr.P.C. is a general provision for impounding any document or thing, it shall prevail over that Section in the Cr.P.C. as regards the passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport.”

17. Therefore, it is to be seen whether the special enactment is devoid of provisions, which hampers the Special Court to release the vehicle, thereby taking recourse to the provisions contained u/s 451 Cr.P.C. To answer the issue, the relevant provisions of the NDPS Act, which have a bearing on the issue requires to be looked into.

18. Section 52-A of the NDPS Act relates to disposal of seized narcotic drugs and psychotropic substances and sub-section (1) of Section 52-A takes within its fold conveyances as well, meaning, the conveyance used for transporting the substances and the said provision prescribes that such of the narcotic drugs, psychotropic substances, controlled



WEB COPY



CrI.RC.No.1650 of 2023

substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, soon after their seizure be disposed of by such officer and in such manner as that Government, may, from time to time, determine after following the procedure specified. The procedure to be followed in the disposal of the seized narcotic drugs and psychotropic substances, controlled substances and conveyances, therefore, is provided for under sub-sections 2 to 4 of Section 52-A. From 52-A, it is evident, that the procedure contemplated relates to disposal of the drugs and conveyances and does not relate to return of vehicle.

19. Reliance has been placed by the respondents on the decision of the learned single Judge of this Court in Nahoorkani case (supra), the material portion of which is quoted hereunder :-

“12. Further, the provision under Section 63 of the NDPS Act is clear that the decision regarding confiscation had got to be taken during the trial and not after it and the right of the State to confiscate the conveyance and articles or things seized under this Act is irrespective of the result of the trial. In view of the provision under Section 63 of the Act, the provisions of the Code of Criminal Procedure as contained in Sections 451 and 452 will stand modified to the extent and any claimant to the property will be obliged to satisfy the Court in terms of the exceptions carved out in Sections 60, 61 and 62 of the NDPS Act before he is returned the custody of the vehicle taken into consideration when it was being used for transporting a narcotic substance. Therefore, when the conveyance is seized under the NDPS Act, the return of property does not arise as



WEB COPY



CrI.RC.No.1650 of 2023

contemplated under Sections 451 and 452 of Cr.P.C and it is liable to be confiscated under Section 63 of the NDPS Act. The Magistrate may not have jurisdiction to entertain a petition filed under Section 451 of Cr.P.C in the light of the Special Rule made under Section 52A of the Act.

13. In fact, Section 63 of the Act had provided for a procedure in making confiscations. It gives the power to the Court to decide whether any article or thing seized under the Act is liable to be confiscated in terms of Sections 60, 61 or 62 of the Act. Before the amendment to Section 52A, the conveyance was not included as an item which should be seized and disposed of. The very fact that conveyance had been incorporated in the amendment itself indicates that the Government intended to provide a special procedure to deal with such conveyance, while taking into account the fact that most of the transportation is done in conveyances which itself is defined under Section 2(viii) as meaning “a conveyance of any description whatsoever including any aircraft, vehicle or vessel”. Therefore, if any vehicle is involved in the transportation of narcotic drug, psychotropic substance or controlled substance, such vehicles also could be seized and disposed of in terms of Section 52A(1) of the Act.

*14. In the case of **Union of India Vs. Mohanlal and another** reported in **2016 (3) SCC 379**, the Honourable Supreme Court of India issued certain directions, which reads as follows:-*

“31.To sum up we direct as under:

31.1. No sooner the seizure of any narcotic



WEB COPY



CrI.RC.No.1650 of 2023

drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading "seizure and sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.

31.2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989 to ensure proper security against theft, pilferage or replacement of the seized drugs.

31.3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.



31.4. Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading "disposal of drugs".

15. However, the above procedures are not followed by the Special Courts to confiscate the conveyance which is used in drug trafficking as contemplated under Sections 52(A) and 63 of the NDPS Act. Therefore, the accused or the owner of the conveyance are constrained to file a petition under Section 451 of Cr.P.C to return their conveyance. Hence, this Court is constrained to issue the following directions to the trial Courts and the Investigating Officers."

20. From the said decision, it is evident that the learned single Judge had relied upon the decision in Mohanlal case (supra), wherein the Supreme Court had issued directions relating to storage and disposal of the contraband and the conveyances used in the transportation of the said contraband. However, the said decision nowhere dealt with the interim custody of the vehicle sought for, which was seized in the course of seizing the contraband. Therefore, it becomes imperative for this Court to go through the relevant provisions of the NDPS Act to find out the powers of the Special Court to decide on the return of the conveyance used in the transportation of the contraband.

21. Section 60 of the NDPS Act pertains to confiscation of illicit drugs, substances, plants, articles and conveyances, which provides as under :-

"60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.

[(1) Whenever any offence punishable



WEB COPY



CrI.RC.No.1650 of 2023

under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation]. (2) Any narcotic drug or psychotropic substance [or controlled substances"] lawfully produced, imported inter-State, exported inter State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drugs or psychotropic substance [or controlled substances"]which is liable to confiscation under sub-section (1) and the receptacles, packages and covering in which any narcotic drug or psychotropic substance, [or controlled substances] materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation. (3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, [or controlled substances]51 or any article liable to confiscation under sub-section (1) or subsection (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precaution against such use."

22. Sub-section (3) of Section 60, which is material for considering the issue raised in the present case relates to the



WEB COPY



Crl.RC.No.1650 of 2023

conveyance used in the transportation of the narcotic drugs and psychotropic substances. Sub-section (3) prescribes that any animal or conveyance used in carrying any narcotic drugs or psychotropic substances or controlled substance or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

23. From the aforesaid provision, what is material is that such of the conveyances, including animals, which are used for carrying the narcotic drugs or psychotropic substance or controlled substance is liable for confiscation and if the owner seeks release of the animal or conveyance, then a mandatory condition is imposed that the owner should prove that usage of the animal or conveyance was done without his knowledge or connivance, either of himself or his agent or the person-in-charge. Therefore, except for the owner of the vehicle, no other person could claim the release of a vehicle or animal, so confiscated, on the allegation that it was used in the transportation of narcotic drugs or psychotropic substance or controlled substance.

24. Section 63 of the NDPS Act relates to the procedure regarding making confiscations. Sub-sections (1) endows upon the trial court to order confiscation of a thing, which is liable for confiscation u/s 60, 61 and 62 pursuant to the order in the trial. Sub-section (2) relates to the confiscation of the article or thing seized under sections 60, 61 and 62 and where the person who committed the offence cannot be found, confiscation may be ordered by the court. First proviso to sub-section (2) mandates that the court below shall not order confiscation of an article or thing until the expiry of one month from the date of seizure or without hearing any person



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CrI.RC.No.1650 of 2023

who may claim any right thereto and the evidence, if any, which he produces in respect of his claim. Second proviso thereto mandates that if any such article or thing other than a narcotic drug, psychotropic substance or controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the Court is of the opinion that its sale would be for the benefit of the owner, it may, at any time, direct it to be sold. From the aforesaid provision, it is clear that what is provided for in Section 63 relates to confiscation of the conveyance and it does not relate to return of the conveyance, barring the provision, which provides the owner to the vehicle to produce evidence which is in consonance with Section 60 (3) with regard to his knowledge.

25. Therefore, to the case on hand, the first and second proviso to sub-section (2) of Section 63 stands attracted. There could be no quarrel about the fact that the vehicle, which is the subject matter of custody, as claimed in the present petition, is a thing, which is kept in open area, which is subject to natural decay, due to its corrosive nature on its contact with the atmosphere. Therefore, second proviso to sub-section (2) relating to grant of custody would be directly relatable to Section 451 Cr.P.C., which vests the trial court to grant custody of the vehicle, but the said power is to be exercised in consonance with Section 60 (3) and 63 (2) of the NDPS Act, meaning thereby, that the vehicle could be ordered to be given custody only to the owner of the said vehicle, as provided for under Section 60 (3) and first and second proviso to Section 63 (2).

26. However, the second proviso to sub-section (2) of Section 63 would come into play only on the first proviso to sub-section (2) of Section 63 gets satisfied. Release of a vehicle by filing a petition u/s 451 Cr.P.C. is a general provision, but where the said seizure of vehicle is the result of invocation of provision under the NDPS Act, the procedures



WEB COPY



CrI.RC.No.1650 of 2023

contemplated under the NDPS Act, which is a special enactment, needs to be satisfied before the release of the vehicle u/s 451 Cr.P.C. could be ordered.

27. From the dissection of the provisions under the NDPS Act, as pointed out above, when it pertains to seizure and confiscation of a conveyance or animal, necessarily, Section 60 (3) r/w proviso to Section 63 (2) has to be satisfied, where it becomes incumbent on the owner of the conveyance or animal to prove, through sufficient material, that he is not only the owner of the conveyance or animal, but equally the animal or conveyance has been used without his knowledge or connivance either by himself or his agent or the person-in-charge of the animal or conveyance in the commission of the offence. Without satisfaction of the aforesaid condition, there could be no order for release of the vehicle, by invoking the provisions of Section 451 Cr.P.C., as the Procedure Code cannot have a march over the special enactment.

28. Though Section 451 Cr.P.C. vests power on the criminal court that pending trial, the court having jurisdiction could order custody of the vehicle, however, with regard to the offences under the NDPS Act, the provisions of the NDPS Act alone could be resorted to and the general procedure under the Code of Criminal Procedure cannot be the basis to grant custody of the property, as it is only a procedural code, which is to be adhered to in the general scenario and not in a specific scenario, such as the NDPS Act, which is a special enactment as held in Suresh Nanda case (supra). As discussed above, when the NDPS Act has provided the scenario in which the conveyance or animal, which has been seized and confiscated could be released, merely because the conveyance is subject to speedy and natural decay would not allow the Procedure Code to have a march over the NDPS Act, which is a special enactment and without fulfilling the



conditions laid down in sub-section (3) to Section 60 and proviso to sub-section (2) to Section 63, the seized and confiscated conveyance could not be released by the Special Court exercising jurisdiction. Furthermore, it could only be the Special Court that could order release of the vehicle, on the conditions prescribed u/s 60 and 63 of the NDPS Act being complied with and not any other Court.

29. In Nahoorkani case (supra), relied on by the respondents, learned single Judge, finding that the directions given by the Apex Court in Mohanlal case (supra) with regard to storage, confiscation and disposal of the contraband and the conveyance, being not followed, was constrained to issue a slew of directions, the material directions being (xi) and (x) containing in Para-16 of the said order, which are quoted hereunder for reference :-

“16.

** * * * **

(xi) Any person claiming the ownership of the conveyance, he may approach the concerned Drug Disposal Committee directly and make his claim. On such application Drug Disposal Committee concerned before taking decision on the disposal of the vehicle, shall grant opportunity of hearing to the parties and pass appropriate orders on the representation made by the party in accordance with law as expeditiously as possible, within a period of 2 months.

(xii) If any persons approach the Trial Court for release of vehicle, in case the property already produced before the trial court and



WEB COPY



CrI.RC.No.1650 of 2023

assigned R.P.No. then such court shall conduct enquiry and pass suitable orders as contemplated u/s 63 of NDPS Act or if the vehicle not produced before the court then competent court shall pass appropriate order by directing the Petitioner to approach concerned Drug Disposal Committee for getting suitable relief.”

30. From the above directions, it is evident that the procedure to be followed is as envisaged u/s 63 of the NDPS Act, which has been dealt with by this Court in extenso in the earlier portion of the order and to that extent the said decision is squarely applicable with regard to the release of the vehicle/conveyance, which is involved in the offence. Therefore, the rightful procedure is for the owner of the property to approach the competent court/special court seeking release of the property, in line with the mandate under Section 60 (3) and proviso to 63 (2) of the NDPS Act and upon satisfaction it is for the Special Court to invoke its power to grant interim custody of the property as sought for under Section 451 Cr.P.C. pending trial.

31. From the aforesaid discussion, this Court holds that it is only the owner of the vehicle, who could claim for interim custody of the property, viz., conveyance, by filing petition before the Special Court u/s 451 Cr.P.C. and upon such petition being filed, subject to fulfillment of the conditions stipulated u/s 60 (3) and proviso to 63 (2) of the NDPS Act, it is for the Special Court to pass appropriate orders. It is further made clear that it is only the Special Court, which is conferred with powers and jurisdiction to decide a petition filed u/s 451 Cr.P.C. with regard to interim custody of the property, viz., the conveyance, by following the mandate contemplated u/s 60 and 63 of the NDPS Act and by virtue of the procedure contemplated u/s 451 Cr.P.C. and strict



adherence to Section 451 Cr.P.C. would not be applicable but for the provisions of Sections 60 (3) and 63 (2) of the NDPS Act.”

9. From the above decision it is clear that it is only the owner of the vehicle, who could claim for interim custody of the property, viz., conveyance, by filing petition before the Special Court u/s 451 Cr.P.C. and upon such petition being filed, subject to fulfillment of the conditions stipulated u/s 60 (3) and proviso to 63 (2) of the NDPS Act, it is for the Special Court to pass appropriate orders. It is further made clear that it is only the Special Court, which is conferred with powers and jurisdiction to decide a petition filed u/s 451 Cr.P.C. with regard to interim custody of the property, viz., the conveyance, by following the mandate contemplated u/s 60 and 63 of the NDPS Act and by virtue of the procedure contemplated u/s 451 Cr.P.C. and strict adherence to Section 451 Cr.P.C. would not be applicable but for the provisions of Sections 60 (3) and 63 (2) of the NDPS Act.

10. Coming to the facts in issue, there is no quarrel that the petition



Crl.RC.No.1650 of 2023

u/s 451 Cr.P.C. has been filed before the trial court, which exercises jurisdiction and that the petition has been filed by the petitioner, who claims to be owner of the property. Therefore, the first arm with regard to jurisdiction and ownership stands fulfilled, but the second arm with regard to the owner of the property satisfying the Court by proving that the phone was used without his knowledge or connivance has not been established, as the phone was seized from the petitioner, who is the owner of the property, along with the contraband and the name of the petitioner is shown as accused in FIR. Therefore, without the petitioner absolving himself from the offence by establishing that he has not trafficked contraband, seeking interim custody of the property would not be permissible, as his complicity in the offence stands intricately connected with the said property and it would not be in the interest of the prosecution to have the phone given interim custody to the petitioner, as the phone is a material object, which is connected with the commission of the offence.

11. In the above backdrop of the factual scenario, even Section 60 (3) of the Act would not stand attracted to the case of the petitioner for seeking



CrI.RC.No.1650 of 2023

interim custody of the phone, as he cannot prove that he had no knowledge or connivance about the offence which had been committed, as his name finds place in the FIR. Rightly appreciating the aforesaid position of law, the trial Court had rejected the plea of the petitioner for interim custody of the phone, which cannot be said to be perverse, arbitrary or illegal and, therefore, the said order does not deserve any interference of this Court.

12. Therefore, rightly, the petition for return of property filed by the petitioner was dismissed by the Court below and the findings rendered therein to arrive at the subjective decision, being rational, reasonable and legal, no interference is warranted with the well considered decision rendered by the Court below. Accordingly, this Criminal Revision Petition fails and the same is dismissed.

12.07.2024

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

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CrI.RC.No.1650 of 2023

To

1. The Principal Special Court under EC & NDPS Act, Chennai.
2. The Inspector of Police,
NIB-CID Police Station,
Vyasarpadi, Chennai-600 039.
3. The Public Prosecutor,
Madras High Court,



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Crl.RC.No.1650 of 2023

M.DHANDAPANI, J.

ssb

Crl.RC.No.1650 of 2023

12.07.2024