



Crl.R.C.No.2048 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.2048 of 2023

Umesh Shankar

... Petitioner

Vs.

The Inspector of Police,
Singanallur Police Station,
Coimbatore District.
[Crime No.116/2023]

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records related to the order dated 16.06.2023 passed in Crl.M.P.No.1950 of 2023 in Crime No.116 of 2023 on the file of the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore and set aside the same and consequently direct the respondent police to return the Yamaha R15 two wheeler bearing registration No.TN-39-Ck-2745 to the petitioner herein.

For Petitioner : Mr.Thiyagarjan.B

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



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ORDER

The petitioner is the owner of the two wheeler Yamaha R15 bearing Registration No.TN-39-CK-2745 which was seized by the respondent Police in Crime No.116 of 2023 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.1950 of 2023 before the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore. The Lower Court, by order, dated 16.06.2023 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 this case. The petitioner purchased the vehicle from one Ramachandran and due to his mother's medical emergency he took care of his mother, thereby he was unable to transfer the registration certificate of the vehicle in his name. The petitioner lent his motor bike to his friend, who was arrayed as accused in the above case. The petitioner was not



aware about the activities of his friend. It is further submitted that he has got necessary documents viz., Form-29, Form-30 and he shall produce the vehicle before the concerned RTO and get the registration certificate transferred in his name once the vehicle is returned and thereafter, he shall submit the self attested photostat copy of the registration certificate with an affidavit giving the details of transfer of registration certificate in his name. Now 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. Hence, he prays for return of property.

3.The Government Advocate (Crl. Side) appearing for the respondent Police submitted that on receipt of information about the illegal sale of ganja, the Sub-Inspector of Police along with the Police team went to the place of occurrence, i.e., Singanallur-Vellaloor Road flyover Bridge, at that time, A1 and A2 tried to escape from the said place in a two wheeler Yamaha R15 bearing registration No.TN-39-CK-2745 and they were in possession of 1.100 kgs of ganja. The Police team arrested the accused, recorded confession statement and the contraband was seized along with



two wheeler under seizure mahazar in presence of witnesses. Thereafter, an FIR registered in Crime No.116 of 2023 for offence under Sections 8(c), 20(b)(ii)(B) and 25 of the NDPS Act. Thereafter, the accused was sent to judicial custody and the seized contraband and the two wheeler produced before the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore. Then, the Inspector of Police sent the samples of contraband to the Forensic Lab, Chennai for chemical analysis.

4.He further submitted that the petitioner, owner of the vehicle, filed a petition before the Court below in Crl.M.P.No.1950 of 2023 seeking return of vehicle Yamaha R15 bearing registration No.TN-39-CK-2745 and the same was dismissed on 16.06.2023. 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.



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5.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner is not an accused in the above case and he has not involved in any other case of similar nature. Further, 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 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.



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6. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 16.06.2023 passed by the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore in Crl.M.P.No.1950 of 2023 is set aside. In view of the same, the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore is directed to return the Motor cycle Yamaha R15, bearing Registration No.TN-39-CK-2745 to the petitioner, on the following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with one surety to the satisfaction of the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore;

(ii) The petitioner to produce Form-29 and Form-30 for purchase of vehicle from the original owner and other related documents. Thereafter, on return of vehicle, the same to be produced before the concerned RTO and necessary ownership changes to be made in the registration certificate of the vehicle and thereafter, to produce the same with self attested photostat copy



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along with confirmation affidavit before the Court below within a period of two months from the date of handing over of vehicle to the petitioner. 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.

28.02.2024

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

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M.NIRMAL KUMAR, J.

cse

To

- 1.The Inspector of Police,
PEW-Gummidipoondi Police Station,
Tiruvallur District.
- 2.The Additional District Judge/Presiding Officer,
Special Court for Essential Commodities Act Cases,
Coimbatore
- 3.The Public Prosecutor,
High Court, Madras.

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