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Crl.R.C.No.1769 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.10.2024
PRONOUNCED ON : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1769 of 2024

K.Dharshanraj

... Petitioner / A3

Vs.

The State Represented by
The Inspector of Police,
C1 Flower Bazaar Police Station,
Avadi City,
(Crime No.47 of 2024)

... Respondent / Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 09.10.2024 made in Crl.M.P.No.10097 of 2024, on the file of the Special Judge, 1st Additional Special Court under EC & NDPS Act, Chennai and allow the above Criminal Revision.

For Petitioner : Mr.S.Kasirajan

For Respondent : Mr.Hasan Mohammed Jinnah
State Public Prosecutor

Assisted by
A.Damodaran
Addl.Public Prosecutor



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ORDER

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Challenging the order of dismissal, dated 09.10.2024, in Crl.M.P.No.10097 of 2024, passed by the learned Special Judge, 1st Additional Special Court under EC & NDPS Act, Chennai, the Petitioner/A3, who is the owner of two wheeler viz.,Yamaha Aerox 155, bearing Reg.No.TN-22-DX-5559, is before this Court with the present Revision, for return of vehicle.

2. Mr.S.Kasirajan, the learned counsel appearing for the petitioner would submit that the petitioner is the owner of the two vehicle viz.,Yamaha Aerox 155, bearing Reg.No.TN-22-DX-5559. The petitioner falsely implicated in this case as A3. Pursuant to the registration of FIR, the petitioner's two wheeler seized by the respondent police. He further submitted that the petitioner is currently doing M.Sc (Vis-comm) in SRM University. The petitioner uses the bike to go to college. Now, the petitioner not involved in any criminal activities. Hence, the learned counsel prayed for return of vehicle. In support of his contention, the learned counsel produced the vehicle's R.C.Book, Insurance copy. The trial Court dismissed the petition for return of vehicle on the ground that, trial commenced and the material objects are yet to be marked.



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3. Mr.Hasan Mohammed Jinnah, the State Public Prosecutor would submit that on 28.03.2024 at about 06.45 hours, the Sub Inspector of Police received secret information about the sale of Narcotic substances. On getting information, the Sub-Inspector of Police gone to the sene of occurrence viz., Central Railway Station Bus Stop, along with his team. At that time, three unknown persons standing on that place suspiciously. They were caught and enquired the accused persons viz., Sideeshvaran/A1, Ragulraj/A2 and Dharshanraj/A3 and on search them, the accused found in possession of 25 LSD Stamp and the same was seized under the cover of mahazar. A1 to A3 arrested and the articles seized. The seized articles produced before the Special Court, who assigned A.No.500/2023 and B.No.282/2024 on 06.04.2024. Now, investigation has been completed and charge sheet filed in C.C.No.397/2024.

4. The learned State Prosecutor vehemently opposed the petition submitting that return of property in the NDPS Act Cases cannot be entertained invoking Sections 457 and 451 of Cr.P.C., and it is liable for confiscation under Section 52-A, 60, 61 and 63 of NDPS Act., unless the owner of the conveyance proves that the conveyance



Act. The sampling shall be done under the supervision of the Magistrate and the Central and State Government and its agencies within six months from the date of the order take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic and psychotropic substances and conveyances, duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. Further, the Apex Court given direction to constitute Drug Disposal Committee and disposal of seized drugs lying in the Police Malkhanas and other places used for storage of drugs and psychotropic substances.

5. The learned Additional Public Prosecutor would further submit that this Court in ***Crl.R.C(MD)No.41 of 2019*** in the case of ***Nahoorkani Vs. The State of Tamil Nadu on 16.06.2023*** held that when the conveyance is seized under NDPS Act, the return of property does not arise as contemplated under Sections 451 and 457 of Cr.P.C., and it is liable to be confiscated under Section 63 of the NDPS Act in the light of special procedure under Section 52-A of the Act. Any person claiming the ownership or right of the conveyance may approach the concerned Drug Disposal Committee directly and make claim and the Drug Disposal Committee before taking a decision



on 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 two months. Further, if any persons approach the trial Court for release of vehicle, the property already produced before the trial Court and assigned R.P.Number then such court shall conduct enquiry and pass suitable orders, as contemplated under Section 63 of the 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. Further, in the event of trial Court / Special Court for NDPS release the vehicle under Section 451 Cr.P.C., shall initiate the confiscation proceedings and dispose the vehicle as contemplated under Section 63 of the NDPS Act.

6. Further, he relied on the order of this this Court in ***Crl.R.C.(MD)No.116 of 2024, dated 08.02.2024*** wherein this Court, following the order passed in ***Nahoorkani's*** case (*cited supra*) held that whenever a return of property is filed, the petitioner has to satisfy Sections 60, 61 and 62 of NDPS Act. In yet another case, in ***Crl.R.C(MD)No.1395 of 2023, Gomathi Vs. State***, dated



27.02.2024, this Court passed orders on the similar line of **Nahoorkani's** case. Further, he referred **Crl.R.C.No.675 of 2023** in the case of **Salimrajan @ Salimraj Vs. State dated 12.07.2023** wherein this Court again followed the **Nahoorkani's** case. In sum and substance, he argued that any property say conveyance seized in NDPS Act cases cannot be returned as a matter of routine and it is only after satisfying Sections 60, 61, 62, and 63 of the said Act.

7. The learned counsel appearing for the petitioner opposed the contention of the learned Additional Public Prosecutor and submitted that **Mohanlal's case**, refers to Section 52-A primarily with regard to not following the Standing Order No.1/1989 and the subsequent Standing Orders, dated 10.05.2007 and 16.01.2015, which prescribed procedures to be followed while conducting seizure of contraband, sampling, safe custody and disposal finding that there is no uniform procedures followed in seizure, sampling and storing the narcotic in safe vaults and handling and disposal of seized narcotics, lying in the malkhanas or any other storage place without proper storage facility, thereby, the danger of recirculation of seized contraband into system is very much likely, hence issued directions to the Investigation Agency, Magistrate and Governments to follow guidelines. Further,



submitted that this Court, following the Apex Court Judgment in ***Sainaba Vs. State of Kerala and Anr*** in ***Crl.A.No.2005/2022***, reported in ***2022 (7) KHC 2731***, wherein the Apex Court released the vehicle involved in the NDPS Act well after ***Mohanlals' case***. Hence, it cannot be said that ***Mohanlal's case*** places restrictions on release of vehicle. The ***Sainaba's case***, being the Judgment of the Apex Court this Court finding, it is binding under Article 144 of the Constitution of India entertained and allowed the return of property petition filed under Sections 451 and 457. The citations referred by the Additional Public Prosecutor is no more *res integra* on the point of return of property. He further added that this Court in Crl.R.C.(MD)No.41 of 2019, Crl.R.C.(MD)No.116 of 2024 and Crl.R.C.(MD)No.1395 of 2023 and in Crl.R.C.(MD)No.675 of 2022, the ***Sainaba's case*** was not considered. In view of the Apex Court Judgment in ***Sainaba's case***, the confiscation proceedings cannot be an embargo to consider the return of property petition, but of course, the return of property petition to be considered on its own merits and hence, there is no impediment to entertain the above petition.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.



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9. On perusal of the records it is seen that the petitioner is an accused in this case and from him, in the scene of occurrence, the two wheeler along with contraband were seized and recovered and in such circumstances, the petitioner's prayer seeking to return of property cannot be entertained. Further, in **Sainaba case**, the Apex Court held that, if the owner of the articles not participated in the offence and no knowledge, he is entitled to claim return of property. But, in this case, the petitioner is an accused and his two wheeler seized from the scene of occurrence, this Court is not inclined to entertain the Revision.

10. In the result, the Criminal Revision Case stands dismissed. However, the Petitioner/A3 is at liberty to seek return of his property at the conclusion of trial.

20.12.2024

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

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To

- 1.The Special Judge,
1st Additional Special Court under EC & NDPS Act,
Chennai
2. The Inspector of Police,
C1 Flower Bazaar Police Station,
Avadi City,
3. The Additional Public Prosecutor,
High Court, Chennai.



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M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

Crl.R.C.No.1769 of 2024

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