



Crl.R.C.No.2096 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.2096 of 2023

Mahalakshmi

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Kottakuppam Police Station,
Villupuram.
Crime No.292/2022.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records relating to the order dated 15.12.2022 made in Crl.M.P.No.3283 of 2022 in Crime No.292 of 2022 on the file of the learned Judicial Magistrate, Vanur and set aside the same.

For Petitioner : Mr.G.Ezhilbalaji

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



Crl.R.C.No.2096 of 2023

WEB COPY

ORDER

The petitioner is the owner of the two wheeler Bajaj Pulsar bearing Registration No.PY-01-CY-5105 which was seized by the respondent Police in Crime No.292 of 2022 for offences under Sections 20(b)(ii)(A) of the NDPS Act. The petitioner filed a petition seeking return of property in Crl.M.P.No.3283 of 2022 before the learned Judicial Magistrate, Vanur. The learned Judicial Magistrate, by order, dated 15.12.2022 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 vehicle by availing vehicle loan from HDFC Bank Limited for her use and she has been using the vehicle regularly. One Deva, who hails from the same locality, requested the petitioner to lent the vehicle for a short while for some urgent need. On his request, the petitioner lent her vehicle to the said Deva, who was arrested in the above case for possession of 10 grams of ganja. During his arrest, the petitioner's bike Bajaj Pulsar bearing



registration No. PY-01-CY-5105 was seized. On coming to know about the same, the petitioner approached the respondent police informing that she is the owner of the vehicle and without her knowledge, the vehicle was used by the accused in the above case. The respondent police informed her that the vehicle has already been produced before the concerned Magistrate. Hence, the petitioner filed a petition seeking return of property before the Court below in Crl.M.P.No.3283 of 2022 which was dismissed by the Court below on 15.12.2022. Hence, he prays for return of property.

3.The Government Advocate (Crl. Side) appearing for the respondent Police submitted that the respondent police received an information about the illegal sale of ganja, entered the same in the General Diary, got permission from the higher officers and then he along with the Police team went to the place of occurrence i.e, Kottakuppam Roundtana. At that time, they saw the accused riding a two wheeler Bajaj Pulsar bearing registration No. PY-01-CY-5105. On seeing the Police, the accused attempted to flee away. Thereafter, he was enquired and he informed that his name is Deva S/o.Murugan residing at Muthumariamman Koil Street,



Vambakeerapalayam, Puducherry. When he was informed about the information received about his possession of ganja, he agreed for a search and gave consent in writing. Thereafter, in the tank cover of the motor bike one Vivo mobile phone and 10 grams of ganja were found. 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 in Crime No.299 of 2022 for offence under Section 20(b)(ii)(A) of the NDPS Act against the accused registered on 07.10.2022. Thereafter, the accused was sent to judicial custody and the seized contraband and the two wheeler produced before the learned Judicial Magistrate, Vanur and 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.3283 of 2022 seeking return of vehicle Bajaj Pulsar bearing registration No. PY-01-CY-5105 and the same was dismissed on 15.12.2022. Challenging the same, the present Criminal Revision Case has been filed. He further submitted that this Court



Crl.R.C.No.2096 of 2023

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 seen that the petitioner is not an accused in the above case and she lent her bike to one Deva who hails from the same locality, who was involved in the above case. 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.

6. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 15.12.2022 passed by the learned Judicial Magistrate, Vanur in Crl.M.P.No.3283 of 2022 is set aside. In view of the same, the learned Judicial Magistrate, Vanur is directed to return the Motor cycle Bajaj Pulsar, bearing Registration No. PY-01-CY-5105 to the petitioner, on the following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with one surety to the satisfaction of the learned Judicial Magistrate, Vanur;

(ii) The petitioner shall produce the original RC Book along with self attested photostat copy of RC Book of the vehicle and other relevant records to prove her ownership. The learned Judicial Magistrate shall peruse the RC book and other records, retain xerox copy of the same and return the



Crl.R.C.No.2096 of 2023

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

To

- 1.The Inspector of Police,
Kottakuppam Police Station,
Villupuram.
- 2.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.2096 of 2023

M.NIRMAL KUMAR, J.

cse

Crl.R.C.No.2096 of 2023

28.02.2024