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Crl.R.C.No.2093 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.2093 of 2023

Sathish Kumar

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
V-4 Rajamangalam Police Station,
Chennai.
[Crime No.909/2022]

... 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.6281 of 2023 on the file of the learned Principal Special Judge for EC and NDPS Cases, Chennai dated 25.09.2023 and consequently direct the respondent police to return the property to the petitioner bike bearing registration No.TN-05-CD-8773, Yamaha R15 Deep Purplish Blue colour.

For Petitioner : Mr.S.Thirugnanam

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-05-CD-8773 which was seized by the respondent Police in Crime No.909 of 2022 for offences under Sections 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of the NDPS Act. The petitioner filed a petition seeking return of property in Crl.M.P.No.6281 of 2023 before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 25.09.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that his friend Lokesh requested him to lend his bike for a short while. On his request, the petitioner lent his vehicle to the said Lokesh, who is said to have involved in the case of illegal possession of 1.200 kgs of ganja along with three others. During investigation, the petitioner's bike Yamaha R15 bearing registration No.TN-05-CD-8773 was seized. On coming to know about the same, the petitioner



approached the respondent police informing that he is the owner of the vehicle and without his knowledge, the vehicle was used by the accused in the above case. The respondent police informed him that the vehicle has already been produced before the Special Court. Hence, the petitioner filed a petition seeking return of proper before the Court below in Crl.M.P.No.6281 of 2023 which was dismissed by the Court below on 25.09.2023. It is submitted that the petitioner purchased the vehicle by availing vehicle loan from HDFC Bank Limited and he used his vehicle for his avocation. Due to detention of vehicle, he is unable to continue his routine work and greatly impaired. Further, the petitioner is also forced to pay monthly EMI, otherwise the vehicle would be seized by the Financier. 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 by Lokesh, Manikandan and Charles near Kolathur 200 ft road, Kannagi Nagar Junction. Then he along with the Police team went to the place of occurrence where the said persons were standing near



Blue Colour motor bike Yamaha R15 bearing registration No.TN-05-CD-8773 and when they were enquired, each of the accused persons had taken out the concealed ganja from their hip which was kept in small packets. The Police team arrested the accused persons, 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.909 of 2022 for offence under Sections 8(c), 20(b)(ii)(B) of the NDPS Act against the accused persons registered on 12.12.2022. Thereafter, the accused were sent to judicial custody and the seized contraband and the two wheeler produced before the Principal Special Court under EC & NDPS Act, Chennai. 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.6281 of 2023 seeking return of vehicle Yamaha R15 bearing registration No.TN-05-CD-8773 and the same was dismissed on 25.09.2023. Challenging the same, the present Criminal Revision Case has been filed. He further submitted that this Court



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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 he lent his bike to his friend, 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 25.09.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.6281 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 Motor cycle Yamaha R15, bearing Registration No.TN-05-CD-8773 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 Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai;

(ii) The petitioner shall produce the original RC Book along with self



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attested photostat copy of RC Book of the vehicle and other relevant records to prove her ownership. 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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To

- 1.The Inspector of Police,
V-4 Rajamangalam 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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