



WEB COPY



Crl.R.C.No.1970 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1970 of 2024

AYYARAPPAN

...

Petitioner

Vs.

THE STATE REPRESENTED BY
SUB INSPECTOR OF POLICE,
THIRUMANUR POLICE STATION,
ARIYALUR DISTRICT.

CR.NO.219/2024

...

Respondent

Prayer: Criminal Revision Petition filed under Sections 338 & 442 of BNSS Act, 2023 to set aside the order passed in Crl.M.P.No.7032 of 2024 on the file of the Judicial Magistrate No.II, Ariyalur, dated 30.10.2024. .

For Petitioner : Mr.B.Kumarasamy

For Respondent : Mr.S.Udaya Kumar
Govt. Advocate (Crl.side)

ORDER

The Revision challenges the dismissal of the petitioner's application filed under Section 338 & 442 of BNSS for return of crackers seized from the premises of the petitioner by the respondent during the course of investigation in Crime No.219 of 2024 registered for the offences under



Section 288, 223 of BNSS r/w Section 3 of Explosives Substance Act.

WEB COPY

2. The allegations against the petitioner is that he was in possession of crackers without a valid license. The petitioner sought for return of those crackers on the ground that the crackers would lose its value and the petitioner would return the crackers to the vendor; that the crackers are still in the godown of the petitioner which is guarded by the respondent police; that the crackers are not essential for establishing the alleged offence and is not liable for confiscation.

3. The respondent opposed the said prayer on the ground that the petitioner is likely to commit the same offence if the crackers are returned to him.

4. The learned Magistrate, on considering the rival submissions, dismissed the request of the petitioner by the impugned order.

5. The learned counsel for petitioner reiterated the submissions made before the trial court and submitted that this Court under similar circumstances in Crl.RC No.326 of 2015 in K.Baskar Vs. State and in



N.Devathathuvam vs. State in Crl.RC (MD) No.488 of 2011 dated 15.09.2011 held that the crackers can be returned to its owner since the crackers would become useless due to passage of time.

6. The learned Government Advocate (crl.side), per contra, submitted that the trial court had considered all the above aspects and had dismissed the petition and there is no reason to interfere with the order of the trial court. The respondent had also filed a counter to that effect.

7. Heard the learned counsel appearing for the petitioner as well as the Government Advocate (crl.side) and perused the records.

8. According to the learned counsel for the petitioner, the petitioner had a valid licence and the licence was temporarily suspended against which he had filed an appeal. The crackers are still in the godown of the petitioner which is guarded by the respondent. The value of the crackers according to the petitioner is Rs.1,00,000/- and according to the respondent, it is Rs.1,44,000/-. The crackers are perishable in nature and if it is not put to use, it would neither help the petitioner nor the prosecution.



WEB COPY

9. This court, in Crl.RC No.326 of 2015 had considered this very question and directed return of the crackers to its owner. In that case, the licence was not renewed and a renewal application was pending. In any case, since the crackers are in the godown of the petitioner and it is perishable, no useful purpose would be served by not releasing it. Therefore, this court is of the view that the crackers can be returned to the petitioner on certain conditions.

10. Accordingly, this **Criminal Revision Case is allowed** and the impugned order passed in Crl.M.P.No.7032 of 2024 on the file of the Judicial Magistrate No.II, Ariyalur, dated 30.10.2024 is set aside. In view of the same, the respondent is directed to return the crackers to the petitioner on the following conditions:

(i) The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees one Lakh only) with two sureties for a likesum to the satisfaction of the learned Judicial Magistrate No.II, Ariyalur,;

(ii) A mahazar containing the particulars of the crackers/fireworks shall be prepared and videographed and the same shall be marked at the time of trial in lieu of



Crl.R.C.No.1970 of 2024

marking the material objects.

WEB COPY

13.12.2024

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

To

1.The Judicial Magistrate No.II,
Ariyalur,

2.The Sub Inspector of Police,
Thirumanur Police Station,
Ariyalur District.

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.1970 of 2024

SUNDER MOHAN, J.

rgr

Crl.R.C.No.1970 of 2024

13.12.2024