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Crl.R.C.No.2173 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

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THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

Crl.R.C.No.2173 of 2023

Mariyammal

... Petitioner

Vs.

1.The Inspector of Police,
Redhills PEW Police Station,
Chennai.

2.Puja Finance

Represented by its Proprietor,
Mr.Goutam Chand

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the impugned order passed by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai on 17.11.2023 in Crl.M.P.No.7711/2023 in C.C.No.795/2023, on the file of 1st respondent.

For Petitioner : Mr.S.Chetan Prakash

For Respondent-1 : Mr.S.Raja Kumar
Additional Public Prosecutor



Crl.R.C.No.2173 of 2023

ORDER

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The petitioner is the owner of the Auto bearing Registration No.TN-04-AT-8264, which was seized by the respondent Police in Crime No.185 of 2023 and shown as case property in C.C.No.795 of 2023 for offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the Narcotics Drugs and Psychotropic Substances Act (NDPS Act). The petitioner filed a petition seeking return of Auto bearing Registration No.TN-04-AT-8264 in Crl.M.P.No.7711 of 2023 before the learned I Additional Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai. The learned I Additional Special Judge, by order dated 17.11.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the learned counsel for petitioner is that one Anthony Raj entered into a hire purchase agreement with Puja Finance and was running the Auto and thereafter he was unable to repay the dues within



Crl.R.C.No.2173 of 2023

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time. Hence, the vehicle was seized by the financier/second respondent. In the meanwhile, the said Anthony Raj passed away. Thereafter, as per hire purchase agreement, the ownership of the vehicle was with the financier. Thereafter, the petitioner purchased the said Auto from Puja Finance/second respondent vide hire purchase agreement dated 01.04.2023. The petitioner is a cancer patient and taking treatment at Stanley Government Hospital. Hence, the Auto was let out for rent to one Balamurugan and the said Balamurugan would take the vehicle and pay the rental charges. With that earnings only the petitioner was surviving.

2.1. This being so, on 09.04.2023, the vehicle was seized by the respondent police found that A1/Balamurugan and other two accused were smuggling Narcotics Ganja of 12.500 kgs in the said Auto. The petitioner later came to know about the seizure of the vehicle and informed the police about petitioner being the owner of the vehicle and without her knowledge the offence committed. The respondent police informed that vehicle already



Crl.R.C.No.2173 of 2023

WEB COPY

seized and produced before the Court and the petitioner has to approach the trial Court. Thereafter the petitioner filed the return of property petition with all relevant documents but the trial Court not considered the same and dismissed the return of property petition. It is further submitted that 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 vehicle.

3.The Additional Public Prosecutor appearing for the respondent Police filed a counter and submitted that the case of the prosecution is that, on 09.04.2023, at about 08.40 hours., Tmt.Sasikala, the Special Sub Inspector of Police, received a secret information about illegal sale of GANJA. Thereafter the Special Sub Inspector of Police along with his police team went to the place of occurrence, i.e., near Hindustan Petrol Bunk, NCTPS Road Pattamunthiri, Redhills, at that time, A1/Balamurugan, A2/ Aakash and A3/Chandrasekar were came in Auto bearing registration No.TN 04 AT 8264



Crl.R.C.No.2173 of 2023

WEB COPY

and the respondent police caught the accused in spot and enquired them and found 12.500 Kgs of Ganja, in illegal possession of accused. Thereafter, the respondent police, arrested the accused A1 to A3 and recorded their confession statements and seized total contraband of 12.500 kgs of Ganja, Samsung M12 Mobile Phone, Oppo A15s Mobile Phone, Oppo Reno6 Mobile Phone and vehicle under the cover of seizure mahazar in the presence of witnesses. Based on the above, a case was registered in Prohibition Enforcement Wing, Redhills in Crime No.185 of 2023 for offence under Sections 8(c) r/w. 20(b) (ii) (B), 29(1), 25 of NDPS Act on 09.04.2023 at about 11.40 hours against the accused by the Inspector of Police, i/c. PEW, Ambattur and submitted before the respondent police for further investigation.

3.1. He further submitted that during the course of investigation, the accused A1 to A3 were produced before the Learned Judicial Magistrate Court No-II, Ponneri and remanded into Judicial custody. During the course



Crl.R.C.No.2173 of 2023

WEB COPY

of investigation, seized contraband of 12.500 kg Ganja, Samsung M12 Mobile Phone, Oppo A15s Mobile Phone, Oppo Reno6 Mobile Phone and vehicle (i.e) Auto bearing registration No.TN 04 AT 8264 produced before the Special Court for EC & NDPS Act cases, Chennai and the same was taken on file and assigned A. No.723 of 2023, B.No.500 of 2023, dated 10.05.2023. Thereafter, through proper channel, sample of Ganja sent to the Forensic Science Laboratory, Chennai for chemical analysis and the same was yet to be taken on file.

3.2. He further submitted that during the course of investigation, the petitioner namely Mariyammal, filed a petition under Section 451 Cr.P.C for return of Auto bearing registration No. TN 04 AT 8264 before the Principal Special Court under EC & NDPS Act cases, Chennai in Crl.M.P.No.7711 of 2023 in which she stated that she is the owner of the seized Auto. The said petition was dismissed on 17.11.2023. Challenging the above order the petitioner filed the present petition before this Court.



Crl.R.C.No.2173 of 2023

WEB COPY

3.3. He further submitted that petitioner is not the owner of the vehicle, the vehicle is belongs to one Anthony Raj, who is no more now, the petitioner is no way related to this present vehicle. On perusal of the relevant papers annexed in the typed set it is seen that the present petitioner has purchased the said vehicle (Passenger Auto) from Puja Finance/2nd Respondent under Hire purchase agreement vide sale receipt dated 01.04.2023 for the sale consideration of Rs.1,40,000/- and paid an advance amount of Rs.45,000/-. The NDPS Act mandates that seized properties shall be confiscated in accordance with provisions of the Act. Hence, it is liable to be dismissed.

3.4. He further submitted that the respondent police took steps to proceed the vehicle under Confiscation and also filed a petition before the learned Principal Special Judge, Special Court for EC and NDPS Act, Chennai and the same was taken on file and assigned S.R.No.8160 of 2023, dated 17.10.2023. In view of the above, he prays for dismissal of the criminal



Crl.R.C.No.2173 of 2023

WEB COPY

revision case. 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.

4.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner is the owner of the vehicle and she is not an accused in this case. The petitioner let out the Auto for rent to A1/Balamurugan. Further no contraband was seized from the petitioner. 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*



Crl.R.C.No.2173 of 2023

WEB COPY

Gujarat reported in 2002 10 SCC 283” released the vehicle which was involved in the NDPS Act. Further, the learned Additional Public Prosecutor 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.

5.Accordingly, this Criminal Revision Case is allowed and the impugned order dated 17.11.2023 passed by the learned I Additional Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai in Crl.M.P.No.7711 of 2023 is set aside. In view of the same, the learned I Additional Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai is directed to return the Auto bearing Registration No.TN-04-AT-8264 to the petitioner, on the



Crl.R.C.No.2173 of 2023

following conditions:-

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(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 I Additional Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai;

(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 I Additional 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 she will produce the vehicle as and when required by the respondent and by the court below.

05.03.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Crl.R.C.No.2173 of 2023

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- To
- 1.The Inspector of Police,
Redhills PEW Police Station,
Chennai.
 - 2.The I Additional Special Judge,
I Additional Special Court for Exclusive Trial
of Cases under NDPS Act, Chennai.
 - 3.The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.2173 of 2023

M.NIRMAL KUMAR, J.

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Crl.R.C.No.2173 of 2023

05.03.2024