



CrI.R.C.(MD).No.445 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.R.C.(MD) No.445 of 2024

Rajalingam

...Petitioner/3rd Party/
Owner of Vehicle

Vs.

The State represented by,
The Inspector of Police,
Pasupathipalayam Police Station,
Karur.
In Crime No.337/2023.

... Respondent/Complainant

PRAYER : Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order dated 16.02.2024 passed in CrI.M.P.No.95 of 2024 in C.C.No.296/2023 on the file of the learned Additional District and Sessions Judge/Special Court for E.C and NDPS Act Cases, Pudukkottai District pertaining to Crime No. 337 of 2023 on the file of the respondent Police and direct the respondent to return the interim custody of the petitioner's vehicle bearing Registration No.TN 47 AK 9181 (Bajaj Pulsar NS 160) to the petitioner by allowing this Criminal Revision.



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For Petitioner : Mr.M.Vivek

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed to set aside the order, dated 16.02.2024 passed in CrI.M.P.No.95 of 2024 in C.C.No.296/2023 on the file of the learned Additional District and Sessions Judge/Special Court for E.C and NDPS Act Cases, Pudukkottai District pertaining to Crime No. 337 of 2023 on the file of the respondent Police and direct the respondent to return the interim custody of the petitioner's vehicle bearing Registration No.TN 47 AK 9181 (Bajaj Pulsar NS 160) to the petitioner by allowing this Criminal Revision.

2. According to the prosecution, the petitioner's vehicle was involved in illegal transportation of the contraband namely Ganja weighing about 1.100 grams.



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3. According to the petitioner, he is the owner of the said vehicle and without his knowledge, his vehicle was involved in the said occurrence. Further, he is not added as an accused in the said Crime. Hence, he has filed a petition under Section 451 of Cr.P.C. before the Court below seeking interim custody of the said vehicle.

4. The learned Special Public Prosecutor appeared for the respondent before the Court below has objected to allow that petition stating that the petitioner is the father of the accused in Crime No.337 of 2023. Hence, the said vehicle was involved in the said crime without his knowledge is not acceptable.

5. Considering the submissions made by both sides, the learned trial Judge has dismissed that petition, vide order dated 16.02.2024. Challenging the same, the present revision petition has been filed before this Court.



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6. The learned counsel appearing for the petitioner would submit that the petitioner is not added as the accused and his vehicle was falsely roped in this case without his knowledge. He has no knowledge about the illegal transportation of Ganja using his vehicle. Hence, the order passed by the Court below is liable to be set aside.

7. The learned Additional Public Prosecutor, on instruction, would submit that the relationship between the petitioner and the accused, who said to have transported the Ganja is father and son. Further, investigation is at preliminary stage and Final Report is not yet filed. At this stage, the petition filed under Section 451 of Cr.P.C. is not maintainable in view of Section 61 and 62 of the NDPS Act.

8. This Court has considered the rival submissions and also perused the impugned orders.

9. As rightly pointed out by the learned Additional Public Prosecutor, the petition under Section 451 of Cr.P.C. is not maintainable as



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per the judgment of this Court in ***CrI.R.C(MD) No.41 of 2019 in Nahoorkani Vs. State*** is held as follows:

16. Accordingly, this Criminal Revision Case is disposed of with the following directions to the Special Courts and the Investigating Officers with regard to the disposal of conveyances seized under the NDPS Act, 1985:-

“(i) Immediately after seizure of conveyance, the Investigating Officer shall ascertain the ownership and hypothecation details, if any, of the seized conveyance from the concerned Registering Authority and the details of seizure of conveyance shall be informed to the concerned Registering Authority.

(ii) The Investigating Officer shall approach the Judicial Magistrate/Special Court in terms of Section 52A(2) of the NDPS Act, 1985, for certification of the correctness of the inventory and taking photographs, certification of such photographs and photocopies of Registration Certificate, Insurance, permit, Pollution and other relevant documents of the conveyance.

(iii) The Investigating Officer shall prepare an inventory of the seized conveyance in the format



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given below:-

*Inventory of Seized conveyance
(Under Section 52A(2) of the NDPS Act,
1985)*

- 1) Crime No.*
- 2) Seizing Agency*
- 3) Seizing Officer*
- 4) Date of Seizure*
- 5) Place of Seizure*
- 6) Found in possession of the person*
- 7) Registration No.*
- 8) Chassis No.*
- 9) Engine No.*
- 10) Make*
- 11) Model*
- 12) Colour*
- 13) Cubic Capacity*
- 14) Total KM run*
- 15) RTO Detail*
- 16) Ownership Details*
- 17) Hypothecation Details*
- 18) Insurance Details*
- 19) Fast Tag Details*
- 20) Name and Designation of the officer*



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prepare the inventory.

(iv) With permission of the Magistrate for taking photographs of the conveyance which stationed at warehouse or any other place. The photographs of the cavities made in the vehicle shall be covered specifically. It also shall contain chassis number and engine number etc.

(v) In terms of S. 52 A (2) of the NDPS Act, 1985 r/w notification G.S.R. 899(E) dated 23.12.2022, no separate order is required for disposal of seized vehicle. The inventory, certified photographs and certified copies of Registration Certificate and other relevant documents would be forwarded to the trial court for treating it as primary evidence.

(vi) The Investigation Officer send the copy of the inventory and other case documents, Panchnama/seizure memo a set of photographs shall be forwarded to the concerned Drug Disposal Committee.

(vii) After receipt of chemical analysis report, any officer in-charge of a police station / any officer empowered under section 53 of the act shall initiate action for disposal of narcotic drugs, psychotropic substances, controlled substances or



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conveyances under section 52-A NDPS Act.

(viii) The sale proceeds of such conveyances shall either be deposited in the official account of DLEA and its proof would be submitted in the Court or in the form of Fixed Deposit after deposition in any public sector bank would be submitted in the Court.

(ix) If the trial Court order confiscation/forfeiture of the conveyance to the Department, the Department shall forfeit the sale proceeds along with accrued interest in the manner known to law.

(x) If the vehicle is not confiscated/forfeited to the Department, if the Department does not challenge the order in Appellate Forum, then such sale proceed would be released to the rightful owner with accrued interest under intimation of the Court.

(xi) Any person claiming the ownership of the conveyance, he may approach the concerned Drug Disposal Committee directly and make his claim. On such application Drug Disposal Committee concerned before taking decision on the 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



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possible, within a period of 2 months.

(xii) If any persons approach the Trial Court for release of vehicle, in case the property already produced before the trial court and assigned R.P.No. Then such court shall conduct enquiry and pass suitable orders as contemplated u/s 63 of 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.

(xiii) All the trial courts/special court for NDPS, irrespective pending trial if they release the vehicle under section 451 of Cr.P.C, shall initiate the proceedings confiscation and dispose the vehicle as contemplated under section 63 of NDPS Act.

17.The learned Additional Public Prosecutor submitted that humpty's number of vehicles which are involved in the NDPS Act are not claimed so far either by the owner/accused. All the unclaimed vehicles are lying in the concerned Police Station and they are decaying due to weather. Therefore, the Director General of Police, Chennai is directed to collect the data with regard to unclaimed vehicles and returned vehicles from the respective zone in Tamil Nadu once



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in two months and report before this Court once in three months.

18.In the case on hand, though the Magistrate dismissed the petition filed for return of property on other ground, the petition itself filed under Section 451 of Cr.P.C is not all maintainable when the vehicle was seized under the NDPS Act.”

10. Further, the judgment of this Court in ***Crl.R.C(MD) No.144 and 145 of 2024 in Harish Kumar vs. Inbamathi @ ZoZo*** is held as follows:

9. From the above decision it is clear that it is only the owner of the vehicle, who could claim for interim custody of the property, viz., conveyance, by filing petition before the Special Court u/s 451 Cr.P.C. and upon such petition being filed, subject to fulfillment of the conditions stipulated u/s 60 (3) and proviso to 63 (2) of the NDPS Act, it is for the Special Court to pass appropriate orders. It is further made clear that it is only the Special Court, which is conferred with powers and jurisdiction to decide a petition filed u/s 451 Cr.P.C. with regard to interim custody of the property, viz., the



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conveyance, by following the mandate contemplated u/s 60 and 63 of the NDPS Act and by virtue of the procedure contemplated u/s 451 Cr.P.C. and strict adherence to Section 451 Cr.P.C. would not be applicable but for the provisions of Sections 60 (3) and 63 (2) of the NDPS Act.

10. Coming to the facts in issue, there is no quarrel that the petitions u/s 451 Cr.P.C. have been filed before the trial court, which exercises jurisdiction and that the petitions have been filed by the petitioners, who claim to be owners of the respective vehicles. Therefore, the first arm with regard to jurisdiction and ownership stands fulfilled, but the second are with regard to the owner of the vehicle satisfying that the Court by proving that the vehicle was used without his knowledge or connivance has not been established, as the vehicle was seized from the petitioners, who are the owners of the vehicle, along with the contraband and the names of the petitioners are shown as accused in the FIR. Therefore, without the petitioners absolving themselves from the offence by establishing that they have not trafficked contraband, seeking interim custody of the vehicle would not be permissible, as their complicity in the offence stands intricately connected with the said vehicle and it



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would not be in the interest of the prosecution to have the vehicle given interim custody to the petitioners, as the vehicles are material objects, which are connected with the commission of the offence.

11. In the above backdrop of the factual scenario, even Section 60 (3) of the NDPS Act would not stand attracted to the case of the petitioners for seeking interim custody of the vehicles, as they cannot prove that they had no knowledge or connivance about the offence which had been committed, as their names find place in the FIR. Rightly appreciating the aforesaid position of law, the trial court had rejected the plea of the petitioners for interim custody of the vehicles, which cannot be said to be perverse, arbitrary or illegal and, therefore, the said order does not deserve any interference at the hands of this Court.

12. Therefore, rightly, the petition for return of property filed by the petitioners were dismissed by the Court below and the findings rendered therein to arrive at the subjective decision, being rational, reasonable and legal, no interference is warranted with the well considered decision rendered by the court below. Accordingly, these Criminal Revision Petitions fail and the same are dismissed.



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11. Since the petitioner is the father of the accused, who have transported the Ganja in the said vehicle, the contention of the petitioner that he has no knowledge about involvement of his vehicle in illegal transportation of Ganja is not acceptable,

12. In the result, this Criminal Revision Petition is dismissed. The order passed by the learned Additional District and Sessions Judge/Special Court for E.C and NDPS Act Cases, Pudukkottai District, vide order, dated 16.02.2024, is confirmed.

24.04.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No

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K.K.RAMAKRISHNAN, J.

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To

- 1.The Additional District and Sessions Court/
Special Court for E.C and NDPS Act Cases,
Pudukkottai District.
- 2.The Inspector of Police,
Pasupathipalayam Police Station,
Karur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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