



Crl.R.C.(MD)No.1353 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.02.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.(MD)No.1353 of 2023

and

Crl.M.P(MD)No.17256 of 2023

Mohammed Abubakkar Siddiq

.. Petitioner

Vs.

The State through

The Sub-Inspector of Police,

Puliyangudi Police Station,

Tenkasi District,

Crime No.339 of 2023

... Respondent

PRAYER : Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order dated 25.10.2023 passed in Crl.M.P.No.4752 of 2023 on the file of the learned Additional District Munsif -cum-Judicial Magistrate,



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Sivagiri, Tenkasi District pertaining to Crime No.339 of 2023 on the file of the respondent police and direct the respondent to grant the interim custody of the petitioner's vehicle (Royal Enfield Motor Cycle) bearing Registration No.TN 76 AL 7047 to the petitioner by allowing this Criminal Revision.

For Petitioner : Mr.S.Maya Perumal

For Respondent : Mr.A.Thiruvadi Kumar,

Additional Public Prosecutor

ORDER

Challenging the dismissal order passed by the learned Additional District Munsif -cum-Judicial Magistrate, Sivagiri, Tenkasi District, in Crl.M.P.No.4752 of 2023 dated 25.10.2023, the present Criminal Revision has been filed by the petitioner for seizure of his vehicle viz., Royal Enfield Motor Cycle bearing registration No.TN 76 AL 7047 by the respondent/Sub-Inspector of Police, Puliyangudi Police station, Tenkasi District, in Crime No.339/2023 for the alleged offences punishable under Sections 8(c) r/w. 20(b)(ii)(A) of NDPS Act and



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Section 77 of Juvenile Justice (Care and Protection of Children) Act,
2015.

2. The case of the prosecution is that on 24.08.2023 at about 13.00 hours, the respondent Police has conducted the prohibition raid near the Suyambulingam Higher Secondary School at T.N.Puthukudi. At that time, on seeing the police, the accused who was standing near the School with Royal Enfield Motor Cycle bearing registration No.TN 76 AL 7047 tried to escape, but the police rounded him and a search was conducted and the accused was found in possession of 25 grams of Ganja. The said contraband was seized along with the vehicle. Thereafter, the respondent Police has registered FIR. On the date of occurrence, the said vehicle was used by the petitioner's brother namely Mohammed Ajmal Khan and he approached the petitioner and requested him to give his vehicle for one day. The petitioner does not have any knowledge about the said occurrence. The present revision petitioner filed a petition under Section 451 of Cr.P.C. for return of the above said vehicle. The learned



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Additional District Munsif -cum-Judicial Magistrate, Sivagiri, Tenkasi District, vide order dated 25.10.2023 dismissed the said petition on the ground that the investigation is at preliminary stage and the offence against the accused under Section 77 of JJ Act is serious in nature. Aggrieved over the said order, the present Criminal Revision Case is filed.

3. The respondent filed a counter affidavit wherein, *inter-alia*, it is stated that since investigation has not been completed the petition may be dismissed.

4. The learned Additional Public Prosecutor submitted that when the property is seized under NDPS Act, the return of property does not arise as contemplated under Sections 451 and 452 of Cr.P.C. and it is liable to be confiscated under Section 63 of the NDPS Act. The Magistrate may not have jurisdiction to entertain a petition filed under Section 451 of Cr.P.C. in the light of the Special Rule made under Section 52A of the Act and the offence committed by the



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petitioner is serious in nature and the vehicle has been utilized for the same and hence, opposed for allowing the petition.

5. Heard, Mr.S.Maya Perumal, learned counsel for the revision petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.

6. The learned counsel for the petitioner submitted that the present petitioner is not involved in any offence and that if the vehicle is kept in open space in the Police station, the value of the vehicle would diminish over a period of time. Therefore, he prayed for return of the vehicle.

7. Per contra, the learned Additional Public Prosecutor contended that the vehicle was used for illegal transportation of Ganja and if the vehicle is ordered to be returned, he may use the vehicle for committing similar offence. Hence, he sought dismissal of the petition.



8. It is relevant to refer a decision of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai vs. State of Gujarat*** reported in ***AIR 2003 SC 638***, wherein, the relevant portion is extracted hereunder.

Vehicles

?In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company, then insurance company be informed by the Court to take possession of the vehicle, which is not claimed by the owner or a third person. If insurance Company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such



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order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.?

9. Accordingly, this Criminal Revision Petition is allowed and the impugned order, dated 25.10.2023 passed by the learned Additional District Munsif-cum-Judicial Magistrate, Sivagiri, Tenkasi District, is set aside. The Additional District Munsif-cum-Judicial Magistrate, Sivagiri, Tenkasi District, is directed to return the vehicle to the owner of the vehicle on the following conditions :

i) the petitioner shall prove his ownership of the vehicle by producing the R.C.Book and other relevant records;

ii) the petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) before



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the learned Additional District Munsif-cum-Judicial Magistrate, Sivagiri, Tenkasi District.

iii) the Court may prepare a panchnama in Judicial Form No.82 with regard to the two wheeler - Royal Enfield Motor Cycle bearing registration No.TN 76 AL 7047 and such panchanama can be used in evidence.

iv) the petitioner shall take photograph of the vehicle bearing registration No. TN 76 AL 7047 and certified under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.

v) the petitioner shall not alienate or encumber the vehicle in any manner;

vi) the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future;



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vii) the petitioner shall also produce the vehicle
as and when required before the court below and
before the respondent police.

Consequently, connected miscellaneous petition is closed.

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

RM

Copy to

1.The Additional District Munsif-cum-Judicial Magistrate,
Sivagiri,
Tenkasi District.

To

1.The The Sub-Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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VIVEK KUMAR SINGH, J.

RM

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