



Crl.R.C.No.2206 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29/1/2025

C O R A M

THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

Crl.R.C.No.2206 of 2024

Varalakshmi ... Petitioner

Vs

State
rep. By The Inspector of Police
P 2 Otteri Police Station
Chennai. ... Respondent

PRAYER: Criminal Revision filed under Section 438 r/w. 442 BNSS to set aside the order passed by the learned Principal Special Court, under EC and NDPS Act, Chennai, in Crl.M.P.No.8406 of 2024 dated 22/11/2024.

For petitioner ... Mr.K.Anusuya
For respondent ... Mr.S.Udayakumar
Government Advocate (Crl. Side)

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ORDER

WEB COPY This revision challenges the dismissal of the petitioner's application seeking return of cash of Rs.17,29,060/- seized by the respondent Police in Crime No.48 of 2024, registered for the offences under Sections 8 (c) r/w. 20 (b) (ii) (B) of the NDPS Act.

2. It is the case of the prosecution that the petitioner's brother-in-law and the petitioner's sister were in possession of 10 kgms of ganja, weighing machine, packing machine and cash of Rs.17,29,060/-. When the respondent conducted search, pursuant to the investigation in Crime No.428 of 2024, contraband along with machines and cash were seized by the respondent on 9/6/2024. While so, the petitioner who is not an accused sought for return of cash stating that she was running Deepavali chit fund in the name of Sairam Deepavali Chit Fund; that she lost her husband three months before the occurrence; that since she did not want to keep cash in her house, she had handed over to her sister, viz., A.2 and that since the said cash belongs to her, she sought for return of cash. The said petition was dismissed by the trial Court on the ground that the petitioner's sister is also one of the accused and the cash cannot be returned.



3. The learned counsel for the petitioner submitted that the petitioner was running the chit fund and cash belongs to her and that in any case, the respondent had not established that the money seized from the house of A.1 and A.2 were sale proceeds of the contraband which were in possession of A.1 and A.2. In the typed set, the petitioner had produced the xerox copies of the chit fund books maintained by her evidencing collection of money from the general public.

4. When the matter came up earlier for hearing, this Court had directed the respondent to conduct enquiry and to ascertain whether the averments made by the petitioner are true. The respondent had filed a counter stating that the chit fund cards were printed recently and hence the averments that money was collected by running a chit fund is not true. The respondent also had stated that the petitioner had submitted fake bills for purchase of provision items to the tune of Rs.17,29,060/-.

5. In response, the learned counsel for the petitioner submitted that the chit fund cards are printed every year and the petitioner has proof for running a chit fund.



6. Be that as it may. This Court is of the view that power under Section 102 of the Code of Criminal Procedure can be exercised only if one of the two conditions mentioned in Section 102 of the Code of Criminal Procedure is satisfied, viz., that the property sought to be seized is suspected to be stolen or found under circumstances which create suspicion of commission of a crime.

7. Admittedly, the property is not a stolen property within the meaning of Section 410 of the Indian Penal Code. The question is whether the cash seized was found under circumstances which creates suspicion of the commission of the offence. This aspect has to be examined by the trial Court, after hearing the petitioner, A.1 and A.2 from whom cash was seized as also the respondent. The respondent is bound to establish that the seizure is justified under Section 102 of the Code of Criminal Procedure. Hence, this Court is of the view that the matter can be remitted back to the trial Court to examine the above aspects and pass orders accordingly.

8. It is also needless to state that if the respondent has collected evidence to show that cash seized from the residence of A.1 and A.2 were the sale proceeds of the contraband, the respondent has to only file an



Crl.R.C.No.2206 of 2024

application under Section 107 of the Code of Criminal Procedure for attachment of the property which has not been done in this case.

9. In the result, order dated 22/11/2024 in Crl.M.P.No.8406 of 2024 by the learned Principal Special Court, under EC and NDPS Act, Chennai is set aside. The learned Principal Special Judge shall consider the matter afresh in the light of the above findings.

10. This Criminal Revision Petition is disposed of accordingly.

29/1/2025

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Principal Special Court, under EC and NDPS Act, Chennai
2. The Inspector of Police
P 2 Otteri Police Station
Chennai.
3. The Public Prosecutor,
Madras High Court.



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Crl.R.C.No.2206 of 2024

SUNDER MOHAN, J

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Crl.R.C.No.2206 of 2024

29/1/2025