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Crl.R.C.No.1443 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.10.2024
PRONOUNCED ON : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No. 1443 of 2024

P.vinodh Kumar Surana ... Petitioner / Petitioner

Vs.

1.Union of India

Rep.by Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai

NCB F.No.48/1/05/2020-NCB/MDS

... 1st respondent /
Complainant

2.Maruthupandi

... 2nd respondent /
Accused

PRAYER: Criminal Revision Petition filed under Section 497 r/w 401 of Cr.P.C., to set aside the order, dated 27.05.2024 made in Crl.M.P.No.2712 of 2024, on the file of the Principal Special Court under EC & NDPS Act, Chennai – 104 and allow the Criminal Revision.

For Petitioner : Mr.M.Suresh

For R1 : Mr.N.P.Kumar
Spl Public Prosecutor



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ORDER

Challenging the order of dismissal dated 27.05.2024 in Crl.M.P.No.2712 of 2024, passed by the learned Principal Special Judge under EC & NDPS Act, Chennai, the Revision Petitioner is before this Court with the present Revision.

2.Mr.M.Suresh, the learned counsel for the petitioner submitted that the petitioner is a vehicle financier. The 2nd respondent is the owner of the Lorry, bearing Reg.No.TN-74-AB-6786, had approached and availed finance for the Lorry, which was earlier financed by M/s.Equitas Small Finance Bank Limited. Now, the Lorry seized by the respondent for transporting Ganja of commercial quantity. The petitioner as financier filed return of property petition, which was dismissed, against which the present Revision.

3. Mr.N.P.Kumar, the learned Special Public Prosecutor vehemently opposed the petition submitting that return of property in the NDPS Act Cases cannot be entertained invoking Sections 457 and 451 of Cr.P.C., and it is liable for confiscation under Section 52-A, 60, 61 and 63 of NDPS Act., unless the owner of the conveyance proves



that the conveyance was used without his knowledge and connivance, he has taken all reasonable precaution against such use. In support of his contention, the learned Special Public Prosecutor relied on the Judgment of the Hon'ble Apex Court in the case of ***Suresh Nanda Vs. Central Bureau of Investigation*** reported in ***(2008) 3 SCC 674*** to stress the point that, where there is a special Act dealing with subject, resort should be to that Act instead of general Act providing for the matter connected with the specific Act. He stressed his argument mainly on ***Union of India Vs. Mohanlal and Another*** reported in ***(2016) 3 SCC 379***, wherein the Apex Court has given directions for storage, seizure and sampling, handling and disposal of seized narcotic drugs and psychotropic substances. Considering the piquant situation in which accumulation of huge quantities of seized drugs and narcotics increased the chances of their pilferage for re-circulation in the market and also finding that despite Central Government Standing Order No.1/1989 and two subsequent Standing Orders, dated 10.05.2007 and 16.01.2015 giving directions, directing that no sooner seizure of any narcotic and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act and Section 52-A(2) of the



Act. The sampling shall be done under the supervision of the Magistrate and the Central and State Government and its agencies within six months from the date of the order take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic and psychotropic substances and conveyances, duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. Further, the Apex Court given direction to constitute Drug Disposal Committee and disposal of seized drugs lying in the Police Malkhanas and other places used for storage of drugs and psychotropic substances.

4. The learned Special Public Prosecutor would further submit that this Court in ***Crl.R.C(MD)No.41 of 2019*** in the case of ***Nahoorkani Vs. The State of Tamil Nadu on 16.06.2023*** held that when the conveyance is seized under NDPS Act, the return of property does not arise as contemplated under Sections 451 and 457 of Cr.P.C., and it is liable to be confiscated under Section 63 of the NDPS Act in the light of special procedure under Section 52-A of the Act. Any person claiming the ownership or right of the conveyance may approach the concerned Drug Disposal Committee directly and make claim and the Drug Disposal Committee before taking a decision



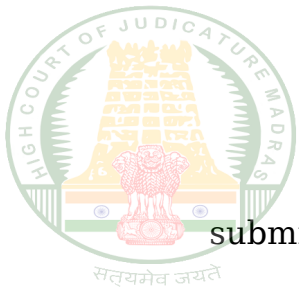
on disposal of the vehicle, shall grant opportunity of hearing to the parties and pass appropriate orders on the representation made by the party in accordance with law, as expeditiously as possible, within a period of two months. Further, if any persons approach the trial Court for release of vehicle, the property already produced before the trial Court and assigned R.P.Number then such court shall conduct enquiry and pass suitable orders, as contemplated under Section 63 of the 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. Further, in the event of trial Court / Special Court for NDPS release the vehicle under Section 451 Cr.P.C., shall initiate the confiscation proceedings and dispose the vehicle as contemplated under Section 63 of the NDPS Act.

5. Further, he relied on the order of this this Court in ***Crl.R.C.(MD)No.116 of 2024, dated 08.02.2024*** wherein this Court, following the order passed in ***Nahoorkani's*** case (*cited supra*) held that whenever a return of property is filed, the petitioner has to satisfy Sections 60, 61 and 62 of NDPS Act. In yet another case, in ***Crl.R.C(MD)No.1395 of 2023, Gomathi Vs. State***, dated



27.02.2024, this Court passed orders on the similar line of **Nahoorkani's** case. Further, he referred **Crl.R.C.No.675 of 2023** in the case of **Salimrajan @ Salimraj Vs. State dated 12.07.2023** wherein this Court again followed the **Nahoorkani's** case. In sum and substance, he argued that any property say conveyance seized in NDPS Act cases cannot be returned as a matter of routine and it is only after satisfying Sections 60, 61, 62, and 63 of the said Act.

6. The learned counsel appearing for the petitioner opposed the contention of the learned Special Public Prosecutor and submitted that **Mohanlal's case**, refers to Section 52-A primarily with regard to not following the Standing Order No.1/1989 and the subsequent Standing Orders, dated 10.05.2007 and 16.01.2015, which prescribed procedures to be followed while conducting seizure of contraband, sampling, safe custody and disposal finding that there is no uniform procedures followed in seizure, sampling and storing the narcotic in safe vaults and handling and disposal of seized narcotics, lying in the malkhanas or any other storage place without proper storage facility, thereby, the danger of recirculation of seized contraband into system is very much likely, hence issued directions to the Investigation Agency, Magistrate and Governments to follow guidelines. Further,



submitted that this Court, following the Apex Court Judgment in ***Sainaba Vs. State of Kerala and Anr*** in ***Crl.A.No.2005/2022***, reported in ***2022 (7) KHC 2731***, wherein the Apex Court released the vehicle involved in the NDPS Act well after ***Mohanlals' case***. Hence, it cannot be said that ***Mohanlal's case*** places restrictions on release of vehicle. The ***Sainaba's case***, being the Judgment of the Apex Court this Court finding, it is binding under Article 144 of the Constitution of India entertained and allowed the return of property petition filed under Sections 451 and 457. The citations referred by the Special Public Prosecutor is no more *res integra* on the point of return of property. He further added that this Court in Crl.R.C.(MD)No.41 of 2019, Crl.R.C.(MD)No.116 of 2024 and Crl.R.C.(MD)No.1395 of 2023 and in Crl.R.C.(MD)No.675 of 2022, the ***Sainaba's case*** was not considered. In view of the Apex Court Judgment in ***Sainaba's case***, the confiscation proceedings cannot be an embargo to consider the return of property petition, but of course, the return of property petition to be considered on its own merits and hence, there is no impediment to entertain the above petition.

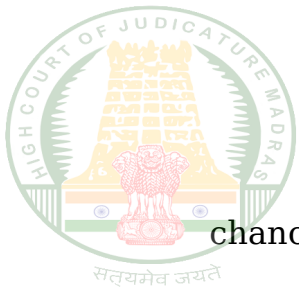
7. In reply, Mr.N.P.Kumar, the learned Special Public Prosecutor submitted that on specific information NCB official seized 308 Kgs of



Ganja transported in the vehicle viz., Lorry, bearing Reg.No.TN-74-AB-6786 on 25.02.2020 near Karamadai Toll Plaza. Thereafter, Maruthu Pandi of Madurai and Aandi from Madurai both were arrested. Maruthu Pandi in his confession, stated that he purchased the old Lorry, bearing Reg.No.TN-74-AB-6786, three months prior to 25.02.2020. The ownership of the vehicle ascertained from RTO North Madurai. It was found the vehicle still stands in the name of Maruthu Pandi and not in the petitioner's name. Hence, opposed for release of vehicle.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. On perusal of the records it is seen that in ***Mohanlal's case***, the Apex Court finding is that, despite issuance of the Standing Order No.1/1989 and the subsequent Standing Orders, dated 10.05.2007 and 16.01.2015, no uniform practice and procedures followed by State or Central Agencies in the matter of drawing of samples at the time of seizure, storage of drugs in safes and vaults, not placed in double-locking system and piquant situation arose by which accumulation of huge quantities of the seized drugs and narcotics increased and the



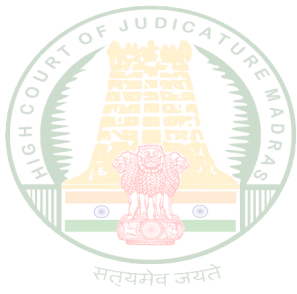
chances of their pilferage for re-circulation in the market, hence put in place certain procedures and guidelines to the Investigation Agency, Magistrate, Central and State Governments, and ordered formation of Drug Disposal Committee to monitor the same. No direction with regard to the conveyance considered and issued. Further, the Notification No.G.S.R.899(E), dated 23.12.2022 issued in terms of Section 52-A of the NDPS Act. The question whether there is any legal embargo in view of confiscation proceedings under Sections 60 to 63 of the NDPS Act and whether petition seeking return of property under Sections 451 and 457 can be entertained and decided has been dealt in detail by the Karnataka High Court Division Bench in ***Rathnamma v. State rep., by PSI, Channagiri Police Station, Davabagere District*** in ***CRL.P.No.3571/2021***, which was in conflict to the Division Bench Judgement of the Kerala High Court in ***Shajahan Vs. Inspector of Excise and Others*** reported in ***2019 SCC Online Ker 3685***, hence the matter was referred to a Larger Bench by the Kerala High Court and the Kerala High Court in the case of ***Pradeep B. Vs. The District Drug Disposal Committee represented by its Chairman, Kasargod and Others*** in ***WA No.1304 of 2022, dated 19.02.2024*** dealt in detail, referring to Section 52-A, guidelines given in the ***Mohanlal's case*** and held that



jurisdictional Special Court under the NDPS Act has power to consider the grant of interim custody of the vehicle under the Act by invoking powers under Section 457 of Cr.P.C., and answered the reference accordingly. It had also referred to the orders passed by Allahabad High Court in ***Shams Tavrej v. Union of India reported in 2023 SCC OnLine AII 1154*** and ***Rajdhari Yadav v. State of U.P. Reported in 2022 SCC OnLine AII 583*** and ***Union of India v. Tejinder Singh reported in 2023 SCC OnLine Gau 729*** and following ***Sainaba Vs. State of Kerala (2022 (7) KHC 273)*** held interim custody of a vehicle involved under the NDPS Act could be ordered. In ***Sainaba's case***, the procedures contemplated and applicable in NDPS Act in consonance with Cr.P.C., are dealt in detail. The Apex Court considering both NDPS Act and Cr.P.C., held as follows:-

“5. It has been opined by the High Court that the Court is not empowered to exercise the jurisdiction under Section 451 of the Code of Criminal Procedure to release a vehicle involved under NDPS Act in interim custody.

6.The appellant has urged inter alia that as per Section 36-C read with Section 51 of the NDPS Act, Criminal Procedure Code would be application for proceedings by a Special Court under NDPS



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Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the offence as alleged by the prosecution nor had knowledge of the alleged transaction.

7. Learned counsel seeks to rely on the judgment of this Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* – 2003 (2) KLT 1089 (SC) = (2002) 10 SCC 283 opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required any any point of time.

8. On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is a appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court.”



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10. On perusal of the records it is seen that the petitioner a financier, who financed for purchase of the vehicle to one A.David Nallathambi, who earlier had hire purchase agreement with M/s.Equitas Small Finance Bank Limited. Thereafter, the petitioner financed for purchasing of vehicle viz., Lorry bearing Reg.No.TN-74-AB-6786. The petitioner and the 2nd respondent entered into a Hire Purchase Agreement on 16.10.2019 for a sum of Rs.6,00,000/-. The petitioner issued a cheque for a sum of Rs.5,82,000/-, bearing No.681382, drawn on Indian Overseas Bank Wall Tax Road Branch, in favour of Equitas Small Finance Bank Limited and the same was also encashed by the Equitas. Thereafter, Equitas Small Finance Bank removed the hypothecation endorsement of the vehicle. After proper transfer of ownership of the vehicle, the Hire Purchase Agreement holder name could be recorded. On 02.11.2019, the petitioner applied through online RTO Madurai to register his name as Hire Purchase Agreement holder of the vehicle. The 2nd respondent failed to repay the loan amount, as per the schedule of hire purchase agreement. The 2nd respondent failed to produce the vehicle before the Madurai RTO for inspection. Hence, hire purchase endorsement could not be made in the Registration Certificate. In the meanwhile, the 2nd respondent was arrested for transportation of 308 Kgs Ganja



and the lorry was seized. Hence the petitioner filed Return Of Property petition before the lower Court and the same was dismissed finding that lorry is in the name of the 2nd respondent / Maruthupandi and the petitioner's hypothecation not recorded and registered in the registration certificate of the vehicle, the petition for return of property not considered.

11. The petitioner a vehicle financier. Along with the petition, he produced Hire Purchase Agreement, dated 16.10.2019. As per the hire purchase agreement, the 2nd respondent / Maruthu Pandi to pay the EMI from 16.11.2019 to 16.10.2022. The hire purchase agreement is for a period of 36 months. The hire purchase agreement signed by Maruthu Pandi as well as the petitioner. The petitioner discharging the earlier finance availed for the vehicle with Equitas has been proved by the petitioner making payment to Equitas on 22.10.2019 by Cheque No.681382 for sum of Rs.5,82,000/-. The petitioner financed for purchase of the vehicle and the vehicle was seized on 25.02.2020 that is within four months of the petitioner financing a sum of Rs.6,00,000/- for the 2nd respondent to purchase the vehicle is confirmed.

12. The petitioner is not an accused. He is a hire purchase



financier. The vehicle viz., Lorry bearing Reg.No.TN-74-AB-6786, availed hire purchase finance by the 2nd respondent. In view of the same, the petitioner, a financier and hirer of the vehicle, has right to repossess the vehicle. Further, if the vehicle is kept in open yard exposed to sunlight and rain, the condition of the said vehicle will be deteriorating day-by-day and the value of the vehicle will get diminished.

13. Hence, following the Supreme Court Judgment, in **Sainaba's case**, and the Full Bench of Kerala High Court in **Pradeep's case**, this Court finds the objection of the learned Public Prosecutor that there is total embargo in entertaining the petition for return of property under the relevant provision of Cr.P.C., is no more *res intergra*. In view of the same, this Court is inclined to entertain and consider the grant of interim custody of vehicles seized under the NDPS by invoking the power under Sections 451 and 457 of Cr.P.C consequently under Section 497 and 503 BNSS.

14. The lower Court following the guidelines given in Sunderbhai Ambalal Desai case of the Apex Court, take photographs, record the features of the vehicle, prepare a proceeding to be used as proof in the trial.

15. In view of the foregoing reasons, this Criminal Revision



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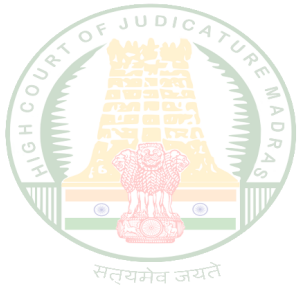
Stands allowed with a direction to the learned Principal Special Judge under EC & NDPS Act, Chennai, to release the petitioner's vehicle viz., Lorry, bearing Reg.No.TN-74-AB-6786, in favour of the petitioner on the petitioner submitting an undertaking on the following terms and conditions:-

- i. The petitioner shall furnish an indemnity bond of Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties, undertaking to produce the vehicle as and when directed by the court.
- ii. The petitioner shall not sale, mortgage or transfer the ownership of the vehicle during the pendency of the case.
- iii. The petitioner shall not change or tamper with the identification of the vehicle in any manner during pendency of the case.
- iv. Any other condition, if any, to be imposed by the trial court.

20.12.2024

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

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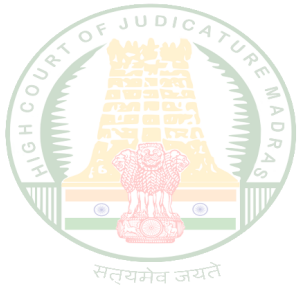


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To

- 1.The Principal Special Judge under EC & NDPS,
Chennai.
2. The Inspector of Police,
PEW-Thiruvallur Police Station,
Thiruvallur.
3. The Public Prosecutor,
High Court, Chennai.

M.NIRMAL KUMAR, J.



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Pre-Delivery Order made in

Crl.R.C.No. 1443 of 2024

20.12.2024