

Reserved on: 01.04.2024

Delivered on: 08.04.2024

Court No. - 77

Case :- CRIMINAL REVISION No. - 1668 of 2023

Revisionist :- Vir Singh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Chandan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Chandan Singh, the learned counsel for revisionist and the learned A.G.A. for State.

2. Perused the record.

3. This criminal revision is directed against the order dated 22.05.2023, passed by Additional Sessions Judge-5, Varanasi, in NDPS Case No. 1226 of 2022 (State Vs. Kanhaiya and Others), under Sections 8, 18, 22, 29 and 60(3) of NDPS Act, Police Station-Sigra, District-Varanasi, whereby the release application filed by revisionist seeking release of his vehicle has been rejected.

4. Record shows that in respect of an incident, which is alleged to have occurred on 25.06.2022, a prompt FIR dated 25.06.2022 was lodged by first informant, S.I. Amit Kumar Tiwari and was registered as Case Crime No. 0242 of 2022, under Sections 8, 18, 22, 29 and 60(3) of NDPS Act, Police Station-Sigra, District-Varanasi. In the aforesaid FIR, three persons namely Satyendra Bhokta, Krishna Kanhaiya Verma and Prabhat Kumar Verma have been nominated as named accused.

5. On the same day, i.e. 25.06.2022, the vehicle of revisionist i.e. Ford Aspire Car bearing registration No. UP 32 KX 8891 was also seized by the police.

6. Aforementioned named accused were ultimately enlarged on bail by this Court. The details of the same are as under:-

- (i). Criminal Misc. Bail Application No. 36623 of 2022 (Krishna Kanhaiya Verma Vs. State of U.P.) allowed vide order dated 23.11.2022,
- (ii). Criminal Misc. Bail Application No. 37211 of 2022 (Prabhat Kumar Verma Vs. State of U.P.) allowed vide order dated 18.11.2022,
- (iii). Criminal Misc. Bail Application No. 59155 of 2022 (Satyendra Kumar Bhokta Vs. State of U.P.) allowed vide order dated 23.01.2023.

7. After completion of investigation of above-mentioned case crime number, Investigating Officer submitted the police report in terms of Section 173(2) Cr.P.C., whereby all the three named accused were charge sheeted under Sections 8, 18, 22, 29 and 60(3) of NDPS Act.

8. Upon submission of the police report, cognizance was taken upon same by Court concerned. Ultimately, Court below passed the framing of charge order dated 22.01.2023, whereby charges were framed under Sections 8, 18, 22, 29 and 60(3) of NDPS Act against charge sheeted accused.

9. While aforementioned proceedings were going on, revisionist, who is the registered owner of the seized vehicle i.e. Ford Aspire Car bearing registration No. UP 32 KX 8891, filed a release application dated 22.11.2022 (Paper No. 18-Kha) seeking release of his vehicle. The same is on record as Annexure-5 to the affidavit filed in support of the stay application appended along with the memo of revision.

10. On the release application filed by revisionist, the police of concerned police station i.e. Police Station-Sigra, District-Varanasi submitted its report dated 25.11.2022. The same is also on record as Annexure-6 to the affidavit detailed above. As per the said report, the seized vehicle was being used for transporting contraband drugs i.e. brown sugar. The seized vehicle has been used by the named/charge sheeted accused for

committing the crime in question. The vehicle has been seized and is lying at Police Station-Sigra.

11. Ultimately, Court below by means of order impugned dated 22.02.2023, rejected the release application filed by revisionist. Perusal of order dated 22.02.2023 will go to show that Court below has rejected the release application filed by revisionist on the grounds that as per the report of Police Station-Sigra, the vehicle in dispute was seized by the police along with the accused, wherein contraband drug was found. The vehicle in question is a case property and is lying within the premises of police Station Sigra. Apart from above, according to the public prosecutor, the vehicle in question has been used for carrying illicit drugs, which are banned and the accused at the time of recovery/seizure have specifically stated that illicit drugs have been carried and transported by using the disputed vehicle. Reliance was also placed upon the judgment of the Supreme Court in **Union of India Vs. Dinesh Kumar Verma, (2005) 9 SCC 330**. Reference was also made to the provisions contained in Section 60(3) of the NDPS Act, which provides that any vehicle used for carrying any narcotic drug or psychotropic is liable to be confiscated unless the owner prove that the same was so used without knowledge, connivance or consent of the owner.

12. Thus feeling aggrieved by the order dated 22.02.2023, revisionist has now approached this Court by means of present criminal revision.

13. Learned counsel for revisionist submits that the order impugned in present criminal revision is manifestly illegal and without jurisdiction. The issue with regard to release of seized goods now stands crystallized by the judgment of Supreme Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283**, wherein the Court has given detailed guidelines with regard to release of seized goods and has further enumerated the circumstances in which, the seized goods should be allowed to be remained under seizure. He has relied upon paragraphs 6, 7,

10, 14, 15, 16 and 17 of the said judgment, which according to the learned counsel for revisionist and relevant for the controversy in hand. For ready reference, the same are re-produced herein below:-

"6. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

7. The question of proper custody of the seized article is raised in number of matters. In Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr., [1977] 4 SCC 358, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly

be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.

10. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs or such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.P.C. to impose any other appropriate condition.

14. 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.

15. 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 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 panchnama should be prepared.

16. For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

17. Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Cr.P.C. should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same."

14. Reference has also been made to the following judgments;-

- (i). AIR OnLine 2021 CHH 206, CRMP No. 193 of 2021 (Ali Ahmad Vs. State of Chhattisgarh)
- (ii). AIR OnLine 2021 MP 3267, CRR No. 3064 of 2021 (Jeeshanf Siddiqui Vs. State of Madhya Pradesh)
- (iii). AIR OnLine 2022 All 316, Criminal Revision No. 3607 of 2021 (Rajdhari Yadav Vs. State of U.P.).

15. On the above premise, the learned counsel for revisionist submits that order impugned cannot be sustained in law and fact. Court below, while rejecting the release application filed by revisionist, has not adverted to

the judgment of the Supreme Court noted above nor has it returned a finding in consonance with the same. Court below has dealt with the merits of the case, which is totally incorrect for deciding the release application filed by revisionist and not with reference to the parameters laid down by the Apex Court in afore-mentioned judgment, which alone would have prudent on the part of Court below in deciding the release application. It is further submitted that though revisionist is the registered owner of the disputed vehicle but the revisionist has neither been named as an accused in the crime in question nor he has been charge sheeted in the crime in question as per the police report already submitted. It is thus contended by the learned counsel for revisionist that the impugned order passed by court below is unsustainable and therefore, liable to be set aside by this Court and the release application filed by revisionist is liable to be allowed.

16. Per contra, the learned A.G.A. for State has opposed the present criminal revision. Learned A.G.A. submits that the disputed vehicle was used for illegally transporting narcotic substance i.e. brown sugar. The act of the named and charge sheeted accused in transporting contraband narcotic i.e. brown sugar in the registered vehicle of revisionist cannot be justified in any view of the matter. The use of the registered vehicle of the revisionist was for an illegal purpose and the same is also not conducive for the society. On the above premise, the learned A.G.A. submits that Court below has not committed any illegality in taking a harsh view of the matter and thereby, rejecting the release application filed by revisionist. In view of the nature of offence, the revisionist even though not named in the FIR nor a charge sheeted accused but since his registered vehicle was being used not only for an act which is illegal but also immoral, therefore, revisionist does not deserve any indulgence by this Court. He, therefore, contends that Court below has neither committed a jurisdictional error in passing the order impugned nor has it exercised its jurisdiction with

material irregularity so as to warrant interference by this Court. As such, the present criminal revision is liable to be dismissed. The learned A.G.A. has lastly submitted that in view of the law laid down by Apex Court in the case of **Union of India Vs. Dinesh Kumar Verma, (2005) 9 SCC 330** and which judgment is a subsequent judgment to **Sunderbhai Ambalal Desai (Supra)**, therefore, the law laid down by the Apex Court in the subsequent judgment referred to above should be followed.

17. Since much emphasis has been laid by the learned A.G.A. on the judgment of the Supreme Court in **Union of India Vs. Dinesh Kumar Verma (Supra)**, therefore, it is necessary to deal with the same. The judgment is a short one, therefore, the same is quoted in its entirety:-

“1. Heard learned counsel for the parties.

2. Leave granted.

3. By the impugned order, the High Court has directed for release of the vehicle during trial of the accused for violation of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act). In our view, in the facts and circumstances of the present case, the High Court was not justified in releasing the vehicle.

4. Accordingly, the appeal is allowed, the impugned order rendered by the High Court is set aside and the prayer for release of vehicle made on behalf of the respondent is rejected. The respondent is directed to surrender the vehicle within a period of one month from today, failing which it would be open to the police to seize the same and report compliance to this Court within a period of six weeks from today.”

18. From the perusal of aforesaid judgment, it is apparent that the same is in the facts and circumstances of the case. No ratio decidendi has been laid down in the judgment referred to above. Consequently, the same does not constitute a binding precedent. The judgment of the Apex Court in

Sunderbhai Ambalal Desai (Supra), is a judgment, wherein a ratio has been laid down and therefore, it is the above mentioned judgment, which constitutes a binding precedents. In view of above, the prayer made on behalf of revisionist for release of his seized vehicle has to be judged in the light of the parameters laid down by Apex Court in the case of **Sunderbhai Ambalal Desai (Supra)**.

19. Having heard the learned counsel for revisionist, the learned A.G.A. for State and upon perusal of record, this Court finds that the issue as to whether the provisions of Sections 451/457 Cr.P.C. are inconsistent with the provisions of NDPS Act is now no longer res-integra.

20. Moreover, the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai (Supra)** also provides for early release of goods in terms of Section 457 Cr.P.C. On the above conspectus, the Court finds that the order passed by court below refusing to release the vehicle of revisionist, who is neither named in the FIR nor is a charge sheeted accused, is not only illegal but also arbitrary. Moreover, by virtue of the explanation to Section 61 of the NDPS Act, a vehicle which has been used for transporting narcotic substance cannot be confiscated.

21. Thus for the facts and reasons noted herein-above, the order impugned cannot be sustained and is liable to be set aside. The present criminal revision is, therefore, liable to be allowed by this Court.

22. It is, accordingly, **allowed**.

23. The impugned order dated 22.05.2023, passed by Additional Sessions Judge-5, Varanasi in NDPS Case No. 1226 of 2022 (State Vs. Kanhaiya and Others), under Sections 8, 18, 22, 29 and 60(3) of NDPS Act, Police Station-Sigra, District-Varanasi is, hereby, quashed.

24. Court below is directed to decide the release application of the revisionist afresh in the light of observations made herein above as well as

the law laid down by the Apex Court as well as this Court as mentioned above within a period of two weeks from the date of the presentation of a certified copy of this order.

Order Date :- 08.04.2024

Vinay