

Neutral Citation No.- 2025:AHC:30394

Reserved
A.F.R.

Court No. - 81

Case :- CRIMINAL REVISION No. - 4747 of 2023

Revisionist :- Baldhir

Opposite Party :- State of U.P.

Counsel for Revisionist :- Ajay Kumar Tiwari, Sangam Lal
Kesharwani

Counsel for Opposite Party :- G.A.

Hon'ble Manjive Shukla, J.

1. Heard Sri Sangam Lal Kesharwani, learned counsel appearing for the revisionist and Sri Brijendra Pratap Singh, learned Additional Government Advocate appearing for the State.

2. The instant criminal revision has been filed challenging therein, the judgement and order dated 20.06.2023 passed by the learned Special Judge (N.D.P.S.)/Additional District and Sessions Judge, Court No. 12, Saharanpur whereby, the application filed by the revisionist for release of his Innova Car, bearing Registration No. HR78-3205, had been rejected and the vehicle had been confiscated in favour of the State Government.

3. Facts of the case, in brief, are that the revisionist is registered owner of Innova Car bearing Registration No. HR78-3205. The police recovered ten grams of smack from the aforesaid vehicle while the revisionist was moving in the said vehicle. The police had registered a criminal case as Case Crime No. 509 of 2021 under Section 8/21 of the N.D.P.S. Act, 1985 in Police Station Gangoh, District Saharanpur. The Investigating Officer, after

collecting evidence against the revisionist, had filed Charge-Sheet before the competent court in respect of the offence committed by the revisionist punishable under Section 8/21 of the N.D.P.S. Act, 1985.

4. The revisionist filed an application for release of the aforesaid Innova Car bearing Registration No. HR78-3205 in his favour. The police raised objection over the aforesaid application for release of the vehicle on the ground that the revisionist is in habit of committing offences punishable under the N.D.P.S. Act, 1985 and the vehicle in question had been purchased by him out of the money earned by the sale of the contraband substances.

5. Learned Special Judge (N.D.P.S.)/Additional District and Sessions Judge, Court No. 12, Saharanpur had passed an order on 20.06.2023 whereby, the application filed by the revisionist for release of the vehicle in question had been rejected and simultaneously the said vehicle had been confiscated.

6. Learned counsel appearing for the revisionist has submitted that a vehicle carrying any narcotic drug or psychotropic substance can be confiscated in exercise of power under Section 60(3) of the N.D.P.S. Act, 1985 but the said power is to be exercised as per the procedure prescribed under Section 63(1) of the N.D.P.S. Act, 1985. It has further been submitted that Section 63(1) of the N.D.P.S. Act, in categorical terms, provides that the power of confiscation of any article including the vehicle can be exercised only after the accused is convicted or acquitted or discharged i.e. only on conclusion of the trial whereas in the present case, the trial has yet not been concluded therefore, the order passed by the trial court confiscating the vehicle in question, on its face, is unsustainable.

7. Learned counsel appearing for the revisionist has relied upon the judgment rendered by the Hon'ble Supreme Court in ***Criminal Appeal No. 87 of 2025 (Bishwajit Dey vs The State Of Assam)*** arising out of the ***Special Leave Petition (Crl.) No. 13370 of 2024*** and has submitted that the Hon'ble Supreme Court, in categorical terms, had held that any vehicle seized in connection with the offence punishable under N.D.P.S. Act, 1985 can be confiscated only after conclusion of the trial i.e. when the accused is convicted or acquitted or discharged whereas, in the case of the revisionist, trial has yet not been concluded therefore, the order passed by the trial court confiscating the vehicle in question, on its face, is illegal.

8. Learned counsel appearing for the revisionist has also argued that the Hon'ble Supreme Court in the judgement rendered in the case of ***Bishwajit Dey (Supra)*** had categorically held that normally, where the accused himself is owner of the vehicle used for carrying the narcotic drug or psychotropic substance, the vehicle may not be released in favour of the accused owner but there is no straight-jacket formula in that regard and therefore, the trial court has to consider the application filed for release of the vehicle on its own merits whereas, in the present case, the vehicle in question had been confiscated straightaway and the application filed by the revisionist for release of the vehicle has not been considered on its own merits.

9. Learned Additional Government Advocate appearing for the State has opposed this revision and has submitted that the revisionist himself is owner of the Innova Car bearing Registration No. HR78-3205 and he has been arrested while carrying ten grams of smack in the aforesaid vehicle. He further submits that the police had submitted a report before the trial court indicating therein that the revisionist is habitual of

committing offences punishable under the N.D.P.S. Act, 1985 and in-fact, the vehicle in question had been purchased out of the money earned by the sale of contraband substances and the said vehicle is also being used for committing offences punishable under the N.D.P.S. Act, 1985 therefore, the trial court had rightly exercised power under Section 60(3) of the N.D.P.S. Act, 1985 and thereby had confiscated the vehicle in question.

10. Learned A.G.A. appearing for the State has vehemently argued that there is neither any illegality nor any infirmity in the impugned order dated 20.06.2023 therefore, the revision filed by the revisionist is liable to be dismissed by this Court.

11. I have considered the arguments advanced by the learned counsels appearing for the parties and have perused the record of the revision.

12. Before proceeding to consider the matter on merits, it would be apt to have a look over the provisions made under the N.D.P.S. Act, 1985 in respect of the confiscation of a vehicle used for carrying the narcotic drug or psychotropic substance. For ready reference, Section 60 and Section 63 of the N.D.P.S. Act, 1985 are extracted as under:

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance or controlled substances lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances which is liable to confiscation under sub-section

(1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substances, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscations.—*(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.*

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

13. This Court finds that Section 60 (3) of the N.D.P.S. Act, 1985 gives power to the trial court to confiscate the vehicle used for carrying narcotic drug or psychotropic substance. Section 63 of the N.D.P.S. Act, 1985 provides the procedure for confiscation and there, it is provided that confiscation of any article can be done under Section 60 of the N.D.P.S. Act, 1985 when the

accused is convicted or acquitted or discharged.

14. The Hon'ble Supreme Court had considered the aforesaid Sections 60(3) and 63(1) of the N.D.P.S. Act, 1985 in its judgement rendered in the case of ***Bishwajit Dey (Supra)*** and had categorically held that the vehicle used for carrying the narcotic drug or psychotropic substance can be confiscated only on conclusion of the trial i.e. when the accused is convicted or acquitted or discharged. For ready reference, paragraph 21 of the judgement rendered in the case of ***Bishwajit Dey (Supra)*** is extracted as under:

“21. Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles can be confiscated by the trial court only on conclusion of the trial when the accused is convicted or acquitted or discharged. Further, even where the Court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the seized vehicle is not liable to confiscation if the owner of the seized vehicle can prove that the vehicle was used by the accused person without the owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person.”

15. The law laid down by the Hon'ble Supreme Court in the case of ***Bishwajit Dey (Supra)*** is very clear and provides that in the matters of offences punishable under the N.D.P.S. Act, 1985, the vehicle involved for carrying the narcotic drug or psychotropic substance can be confiscated only on conclusion of the trial.

16. In the case at hand, it is admitted between the parties that the trial of the crime in question has yet not been concluded therefore, the order whereby the Innova Car bearing Registration No. HR78-3205 had been confiscated, on its face, is illegal.

17. So far as the second issue involved in this case that whether in a case where an accused of a crime punishable under the N.D.P.S. Act, 1985, who is owner of the vehicle used in the

crime, can claim release of vehicle during the trial, is concerned, the Hon'ble Supreme Court in its judgement rendered in the case of ***Bishwajit Dey (Supra)*** had categorically held that normally where the accused himself is owner of the vehicle, the said vehicle should not be released in his favour but the trial court is free to consider and decide the case of release of vehicle on its own merits as there is no straight-jacket formula. For ready reference, relevant paragraphs of the judgement rendered in the case of ***Bishwajit Dey (Supra)*** are extracted as under:

“29. Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e. like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle. Fourthly, where the contraband is seized / recovered from a third-party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.

30. This Court is of the view that criminal law has not to be applied in a vacuum but to the facts of each case. Consequently, it is only in the first two scenarios that the vehicle may not be released on superdari till reverse burden of proof is discharged by the accused-owner. However, in the third and fourth scenarios, where no allegation has been made in the charge-sheet against the owner and/or his agent, the vehicle should normally be released in the interim on superdari subject to the owner furnishing a bond that he would produce the vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court is finally of the opinion that the vehicle needs to be confiscated.

31. This Court clarifies that the aforesaid discussion should not be taken as laying down a rigid formula as it will be open to the trial Courts to take a different view, if the facts of the case so warrant.”

18. This Court finds that the Hon'ble Supreme Court in the

aforesaid judgement rendered in the case of *Bishwajit Dey (Supra)* had categorized various eventualities and had held that normally where the accused himself is owner of the vehicle used for carrying the narcotic drug or psychotropic substance, the trial court may not release the vehicle in favour of the accused but at the same time, the Hon'ble Supreme Court had also observed that the discussion made in the judgement should not be taken as laying down rigid formula and it will be open to the trial court to take a different view if the facts of the case so warrant. Thus, this Court is of the view that even the Hon'ble Supreme Court had categorically held that it is for the trial court to decide the case of release of vehicle, where owner of the vehicle himself is accused of the crime punishable under the N.D.P.S. Act, on its own merits.

19. This Court further finds that the trial court while confiscating the Innova Car bearing Registration No. HR78-3205 vide its order dated 20.06.2023 has not considered the application filed by the revisionist for release of the said vehicle on its own merits therefore, the application filed by the revisionist for release of the vehicle is liable to be considered afresh by the trial court after affording opportunity of hearing to all the concerned parties.

20. In view of the aforesaid reasons, this revision is allowed. The impugned order dated 20.06.2023 passed by the learned Special Judge (N.D.P.S.)/Additional District and Sessions Judge, Court No. 12, Saharanpur, relating to Case Crime No. 509 of 2021 under Section 8/21 of N.D.P.S. Act, 1985, is hereby set-aside.

21. The learned Special Judge (N.D.P.S.)/Additional District and Sessions Judge, Court No. 12, Saharanpur is directed to reconsider the application filed by the revisionist for release of vehicle i.e. Innova Car bearing Registration No. HR78-3205 on

its merits, strictly in accordance with the law laid down by the Hon'ble Supreme Court in the case of ***Bishwajit Dey (Supra)***.

Order Date :- 04.03.2025

A. Mandhani