

THE HIGH COURT OF TRIPURA

AGARTALA

Crl. Pet. No. 11 of 2015

Petitioner :

Sri Subhankar Halder,
S/o. Ratan Halder,
Residing at Barasat, Arabindapally,
Noapara, P.S-Barasat, District North 24
Pargana, Kolkata, West Bengal.

By Advocates :

Mr. B. N. Majumder, Adv.
Mr. R. Saha, Adv.

Respondent :

The State of Tripura,

By Advocate :

Mr. R. C. Debnath, Addl. P. P.

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing & : **8th June, 2015**
Judgment & Order

Whether fit for reporting :

Yes	No
	✓

J U D G M E N T & O R D E R(oral)

By means of this petition, the petitioner has prayed for setting aside of the order dated 17.04.2015 passed by the learned Special Court No.2, West Tripura, Agartala whereby the prayer of the petitioner for release of the truck has been rejected.

[2] The allegation of the prosecution is that on 25.02.2015 truck bearing No.WB-25F-3039 was seized. It was found loaded with contraband drugs such as Phensedyl. It was parked in the courtyard of Bia Bari known as Laxmi Narayan Bibaha Bashar near Amtali Bye-pass Naka Gate. When the police party on the basis of secret information went to the spot they

found that some persons were unloading jute bags from the vehicle and on seeing the police party these persons ran away. Three of them were apprehended on the spot and when the jute bags were opened they were found to contain Phensedyl cough syrup. As many as 4800 bottles of cough syrup were seized. The Registration number of the truck is WB25F 3039. The Chassis number of the truck is MC243KRF0DE010676 and the Engine number of the truck is E683CDDE526206. The learned trial Judge rejected the application holding that confiscation was permitted even before trial and further holding that it was for the petitioner to prove that the vehicle was being used for illicit purposes without his permission.

[3] On behalf of the State, it is urged that the charge sheet has been filed in the case and that the vehicle has been seized under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act') and therefore, this is a case of confiscation and the Truck cannot be released.

[4] Reference may be made to Section 60 of the Act, which reads as follows:-

"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 substance, 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."

[5] The procedure for making confiscation is laid down in Section 63, which reads as follows:-

"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 any 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."

[6] A bare reading of Section 63 clearly shows that confiscation of conveyance and other articles in terms of Section 60 can be made regardless of the acquittal or conviction of the accused. Once the Court comes to certain findings in terms of Section 63 it can order confiscation.

However, any order with regard to confiscation has to be passed after the trial is complete. At this stage, the Truck has not been confiscated, but is only seized as a conveyance used for the transportation of a substance in violation of the NDPS Act.

[7] The question that arises is what should be done with the Truck? Should it be allowed to remain in the Police Station, where it will be subjected to the vagaries of weather? The Truck is a valuable commodity and I am clearly of the view that if it is left with the Police Station, it will turn to junk by the time the trial is completed. When we read Section 60 with Section 63 of the NDPS Act, it leaves no manner of doubt that the purpose of the Act shall be served if safeguards are laid down to ensure that the Truck is produced before the Court as and when required. The vehicle at the same time must be kept in safe custody so that if order of confiscation is passed and it is ordered to be sold it obtains the maximum sale price. In case, the vehicle is permitted to remain in the Police Station without any care it shall be subject to rain and Sun and its condition will deteriorate. Therefore, I am of the considered view that this Court must pass orders to ensure that the vehicle is properly maintained and kept in a proper condition and produced before the trial Court as and when required.

[8] It is not disputed that the petitioner is the registered owner of the Truck. Therefore, it is directed that the Truck bearing No.WB-25F-3039, Engine No. E683CDDE526206, Chassis No. MC243KRF0DE010676 be released in favour of the petitioner on his furnishing cash security of Rs.1,00,000/- (Rupees one lakh) and solvent security to the extent of Rs.9,00,000/- (Rupees nine lakhs) with one local surety of similar amount. The petitioner shall also furnish a bond that he shall maintain the Truck

properly and that he will not part with the Truck or sell the same or create any encumbrance on the Truck till the criminal case is disposed of. The petitioner shall also file an undertaking to the effect that he shall produce the Truck before the trial Court as and when called upon to do so by the trial Court. The petitioner shall not in any manner transfer or dispose of the Truck to any person nor shall he make any change in the body, colour or design of the Truck. The petitioner shall also undertake not to change the registration number of the Truck and shall file an undertaking that no damage shall be caused to the Truck. The petitioner shall also undertake that the Truck shall not be used for any illegal or illicit purpose.

[9] In case, there is any violation of any of the conditions mentioned hereinabove, the Truck can be seized again.

[10] Before release of the Truck, the learned Court below through the police shall ensure that at least 5(five) photographs of the Truck from different angles depicting its colour, shape, size and condition are taken and placed on record. The expenses for such photographs shall be borne by the petitioner. On furnishing of the aforesaid bail bonds, undertaking and photographs, the Truck shall be released in favour of the petitioner till further orders to be passed by the learned trial Court.

[11] With these observations, the Criminal Petition stands disposed of.

CHIEF JUSTICE