

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 622 of 2011**

- Narendra Dhurve age about 38 years, S/o Late Shri Jagannath Dhurve, R/o Near Kali Mandir, Raipur, Distt. Raipur (CG)

---- Appellant**Versus**

- State Of Chhattisgarh through District Magistrate, Rajnandgaon, District Rajnandgaon (CG)

---- Respondent

For appellant	: Mr. Suresh Tandan, Adv. for appellant.
For Respondent/State	: Ms. Shobha Kashyap, Dy. G.A.

Judgment**22/09/2015**

1. This judgment shall dispose of Criminal Appeal No. 622/2011 filed by the appellant under Section 454 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.') against the judgment dated 17-6-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substances) Act, 1985 (in brevity, NDPS Act), Rajnandgaon in Special Case No. 4/2009 whereby and whereunder learned trial Court vide para 46 of the judgment ordered for disposal of property i.e. seized Indica Car bearing registration No. CG 04 H3948 for confiscation and cancelled the supurdnama of present appellant and further ordered for issuance of a separate notice to appellant/supurddar.
2. Brief facts of the case necessary for disposal of instant criminal appeal are that Tata Indica car bearing regd. No. CG 04 H3948 was seized along with illegal substance Ganga from the possession of some Mustaq Khan and Shailendra Dhurve. The investigating officer after due investigation seized the car in question along with other illegal substance Ganja and filed charge sheet before the trial Court. The trial Court after framing the charges against both the accused conducted trial wherein to prove guilt of the accused 13 witnesses were examined by the prosecution. After trial and hearing both the parties, learned trial Court vide impugned judgment convicted both the accused under Section 20 (b) (ii) (C) of the NDPS Act, sentenced them and under Section 452 of the Cr.P.C., ordered for disposal of property at conclusion of trial and ordered for confiscation.

3. Against said order of confiscation, appellant preferred criminal appeal under Section 454 of the Cr.P.C. whereby he has challenged the order passed by the trial Court and took ground that learned trial Court acted with material irregularity and passed the impugned order of confiscation without giving any opportunity of being heard to the appellant and erred in holding Shailendra Dhurve as the owner of the vehicle whereas as defined under Motor Vehicles Act the appellant is registered owner of the vehicle. Sale agreement as surfaced is not accepted to the extent that Shailendra Dhurve is owner of the vehicle as there is agreement to sell on behalf of appellant. It is submitted that order of confiscation is liable to be set aside.
4. I have heard learned counsel for the parties. Perused the judgment impugned and record of the court below.
5. Learned counsel for the appellant supported entire facts and grounds taken in the instant criminal appeal and submitted that on the basis of the grounds taken and the facts stated the appeal be allowed and the order for confiscation be set aside.
6. Per contra, learned counsel for the respondent opposed the appeal and submitted that as per para 46 of the judgment, the vehicle in question was not finally confiscated but the trial court ordered for confiscation and for such confiscation separate notice was ordered to be issued to present appellant. He further submitted that liability to confiscate the conveyance is provided under Sections 60, 61, 62 and 63 of the NDPS Act. There is nothing on record to show as to what was order of the trial Court after giving notice to supurddar/appellant thereby instant criminal appeal is premature looking to the above-mentioned provisions of NDPS Act. Hence the appeal may be dismissed without any appreciation on merit of the case.
7. To appreciate the arguments advanced on behalf of the parties, I have perused the impugned judgment and material available on record.
8. Sections 60 to 63 of the NDPS Act provides for liability regarding confiscation of conveyance and proceeding for confiscation. Learned trial Court gave separate notice to appellant/supurddar for the same. Trial Court has not concluded that the vehicle in question is hereby confiscated. Learned trial Court ordered issuance of notice for confiscation meaning thereby the trial Court gave an opportunity to the appellant for hearing and as per provisions of law, trial court after hearing the persons having interest over the property in question will pass an order under Section 63 of the NDPS Act.

9. A perusal of order mentioned in para 46 of the judgment goes to show that appellant knocked the door of this Court before any final appreciation regarding confiscation.
10. With the above appreciation, in the considered view of this Court, instant criminal appeal as filed is premature looking to the provisions of Section 60 to 63 of the NDPS Act.
11. Consequently, instant criminal appeal is dismissed as premature without any appreciation on merit of the case.

Sd/-
Chandra Bhushan Bajpai
Judge

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