

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 151 of 2015**

- Pramod Nahak S/o Shri Vijay Nahak Aged About 30 years R/O Jaysingh Nagar, Ward No. 6 Sahdol, At Present R/O Godaripara Chirmiri, PS Chirmiri, Tah. Khadagwa, Civil And Rev. Distt. Korea C.G.

---- Appellant**Versus**

- State of Chhattisgarh through the District Magistrate, Baikunthpur, Distt. Korea C.G.

---- Respondent

For appellant : Mr. Sunil Sahu, Advocate.
For Respondent/State : Mr. Chitranjay Patel, Govt. Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****20/04/2015**

1. Heard on admission.
2. The appeal is admitted for consideration.
3. With consent heard finally.
4. Brief facts of the case are that co-accused Kamlesh Jaiswal and accused/ appellant Prafulla Nahak were tried for offence under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act') and under Sections 420, 467 and 468 of Indian Penal Code (in brevity 'IPC') in Special Sessions Case No. 1/14 by Special Judge, NDPS Act, Korea (Baikunthpur). Vide judgment dated 7-7-2014 both the accused are acquitted of the charges. The Vehicle seized during investigation bearing Chassis No. MAT 601465 CWF 32111/14 Engine No. CRAIL 08 FXYW 23639 belongs to the appellant. The appellant is registered owner of the vehicle. He was also examined before the trial court as prosecution witness No. 11 and stated that he is the registered owner and he had given his car to his brother Prafulla Nahak. The appellant also submitted the sale letter,

and letter of agreement. The same is marked as Article 'A' before the trial Court during his examination. In para 38 of the judgment of the trial Court, it is held that as the appellant has not claimed for ownership of the said vehicle and acquitted co-accused Prafull Nahak has also not claimed for the vehicle, hence the vehicle in question may be duly confiscated after period of appeal. By filing this criminal appeal, the appellant submitted that he had also filed application under Section 452 of the Code of Criminal Procedure but the same was dismissed by the trial Court by order dated 18-11-2014 in Case No. 43/2014 (Prafulla Nahak -v- State). The finding recorded in para 38 of the judgment may be set aside and appropriate direction for providing the vehicle to the appellant who is the owner of the vehicle may be passed in the interest of justice.

5. Learned counsel for the respondent State opposed the criminal appeal and submitted that order of the trial Court is well founded. The appeal may be dismissed.
6. During the course of argument, learned counsel for the appellant submitted that he is registered owner of the vehicle. He was not heard regarding confiscation. He had not given the vehicle for illegal transportation and as the accused is acquitted by the trial Court, the vehicle be returned to the appellant as he is the registered owner and the vehicle in question was not used for transportation of any contraband under his knowledge. Since the date he has not received any notice from the authority concerned regarding confiscation of the vehicle. Hence by allowing this appeal, this Court may issue a direction to the trial Court for providing the vehicle to the appellant who is the owner of the vehicle.
7. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence and material available in the record of the trial Court.

8. So far as the order passed by the Court below in case No. 43/2014 dated 18-11-2014 is concerned, the same is not challenged before this Court hence any submission made in that regard is not applicable for the present appeal.
9. So far as challenge of the order regarding disposal of property at conclusion of trial is concerned, the appeal is filed against the order regarding confiscation. The provisions regarding confiscation of conveyance and other articles are provided in Section 60 onwards in the NDPS Act which requires an opportunity to the owner/registered owner as the case may be to prove that the conveyance was used without the knowledge of the owner. It goes to show that the right of hearing exists with the owner/registered owner. Though in the present case, neither the appellant nor the acquitted co-accused Prafulla Nahak prayed before the trial Court that they challenged the element of confiscation but as per the procedure prescribed the trial court ought to have provided opportunity to the person concerned in whose name the vehicle was registered and also to the person who claims to be owner of the vehicle to prove that the vehicle was used without knowledge of the owner himself. If any person proves this fact as expected in Section 60(3) of the NDPS Act, then the said conveyance is not to be confiscated. For this, no inquiry or hearing is offered to the appellant or acquitted accused Prafulla Nahak.
10. If we see the evidence of the appellant as P.W. 11 before the trial Court, the appellant stated on oath that he had purchased the vehicle in question. Thereafter he gave the vehicle to his brother Prafull Nahak after execution of sale deed and agreement Article A-1 duly submitted at the time of evidence and kept with record. So far as the statement under Section 313 of the Code of Criminal Procedure of Prafulla Nahak is concerned, he in answer of questions 6 and 7 denied the facts deposed by P.W. 11. Whatever the material is adduced during trial unless the persons concerned

may be given an opportunity of hearing whether the vehicle in question was liable for confiscation or not, compliance of statute is not completed. The trial Court without giving any opportunity to the persons concerned as mentioned above held in para 38 of the judgment that the vehicle in question be confiscated as per rules after period of appeal which goes to show that a proceeding for confiscation is yet to commence under Section 60 and onwards of NDPS Act. But trial Court has not made any specific order regarding registration of any MJC, show cause to the persons concerned i.e. the present appellant and the acquitted co-accused Prafull Nahak to give them an opportunity to prove that vehicle in question is not liable for confiscation, in the considered opinion of this Court, it would be appropriate to direct the trial court to initiate a proceeding for confiscation under Section 60 onwards of NDPS Act.

11. Consequently, the appeal filed by the appellant is disposed of with a direction to the trial Court under the authority of Section 454 (2) of Code of Criminal Procedure that the trial Court after providing show cause to the appellant and the acquitted accused Prafulla Nahak and also to any other person who claims to be the owner or having any interest in the vehicle in question and after due hearing, pass an order regarding confiscation of the said vehicle. The trial Court shall decide the matter regarding confiscation without being influenced by any observation made in this order. The trial Court shall be at liberty to decide the issue of confiscation as provided in Section 60 onwards of NDPS Act along with other general law.

12. The appeal is disposed of accordingly.

Sd
Chandra Bhushan Bajpa
Judge