

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3662-SB of 2015 (O&M)
Date of decision: 03.05.2016

Baldev Raj

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.S.K.Arora, Advocate for the appellant
Mr.Ashish Sanghi, DAG Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present appeal is the order dated 13.8.2015, passed by learned Additional Sessions Judge, SAS Nagar, Mohali, vide which, Swift Dzire bearing registration number CH-01-AM-8281 was ordered to be confiscated under Section 60(3) Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') since the same was used in the commission of crime by accused Sunil Kumar and Yashpal pertaining to FIR No.54 dated 24.5.2013 registered under Sections 22 of the NDPS Act, Police Station Naya Gaon.

The undisputed facts of the case are that two accused, namely, Sunil Kumar and Yashpal were tried under Sections 22, of the NDPS Act. Vide judgment of conviction dated 4.11.2014 and order of sentence dated 7.11.2014, they were convicted and

sentenced.

Admittedly, the said two accused filed appeal before this Court. Vide order dated 13.1.2015, their sentence was suspended. The appeal was already admitted for hearing.

Learned Additional Sessions Judge issued a notice to the registered owner i.e. Baldev Raj father of the accused Sunil Kumar as to why the vehicle used in the crime should not be confiscated. After hearing him, the impugned order was passed.

I have heard learned counsel for the parties and have also carefully gone through the file.

It comes out that the liability under Section 60(3) of the NDPS Act arises only when it is proved that the vehicle was used in the commission of crime. In the present case, the judgment of the trial Court, convicting and sentencing the accused has not yet become final. Appeal against the said judgment has been filed, which has been admitted by this Court for hearing. Therefore, the matter is still sub-judice.

In these circumstances, until and unless it is finally held that the accused had committed the crime by using the said vehicle, the confiscation order could not be passed. As such, the impugned order is set aside. The lower Court shall always be at liberty to start the proceedings afresh if appeal filed by the accused is ultimately dismissed.

The appeal is accordingly allowed.

03.05.2016

gk

GOPAL KRISHAN
2016.05.06 15:34
I attest to the accuracy and
authenticity of this document
High Court Chandigarh

**(Kuldip Singh)
Judge**