

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 150 of 2017**

- Preeti Upadhyay W/o Gopi Prasad Upadhyay, Aged About 26 Years Occupation Owner Of The Vehicle, R/o Pandariya, Raipur, Tahsil & District Raipur, Chhattisgarh.

**---- Appellant****Versus**

- State Of Chhattisgarh Through S.H.O. Of The Police Station Dongaripali, District Raigarh, Chhattisgarh.

**---- Respondent**


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| For Appellant:       | Mr. Abhishek Saraf, Advocate           |
| For Respondent/State | Mr. Ashish Shukla, Government Advocate |

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**Hon'ble Shri Justice P. Sam Koshy****Order on Board****07.02.2017**

1. The present appeal has been preferred under Section 454 of the Cr.P.C. against the judgment of acquittal dated 22.12.2016 passed in S.T. No. 18/2015 by Learned Special Judge (Under NDPS), Raigarh. Vide the said order the Court below has under Section 452 of the Cr.P.C. ordered for confiscation of the property /vehicle Maruti Van bearing Registration No. M.P. 17-B/3450 by the State Government in case if the appeal is not preferred, after auctioning the property deposit the money to the exchequer.
2. Learned Counsel for the Appellant submits that the present

Appellant is not the accused person in the said sessions trial and that the accused persons have also been granted acquittal in the said offence. As such the trial itself has been concluded and therefore no fruitful purpose would be served in initiating the confiscation process for confiscation of the seized vehicle. It is further contended by the Counsel for the Appellant that when the order of acquittal has been passed by the trial Court, as a natural consequence the vehicle should have been ordered to be released to the Appellant or to its original owner.

3. Learned State Counsel however opposes the appeal on the ground that the Accused persons in the instant case was the husband of the present Appellant along with another co-accused. Further it is also the case where only the accused persons have been acquitted from the charge. The vehicle was involved in the commission of the offence has not been disproved by the Court below. It is further contended that during the trial the present Appellant did not make any efforts for the release of the said vehicle nor did she file any document to show her claim of ownership over the said vehicle.
4. He further submits that even in case if this Court is inclined to allow the appeal the Appellant may be directed to move appropriate application before the Court below for release of the said vehicle and the Court below may release the vehicle if they are fully satisfied of the Appellant alone being the owner of the

said vehicle.

5. Having heard the rival contentions put forth on either side and on perusal of the record, undoubtedly the husband of the Appellant and another accused person were prosecuted for the offence under Section 20(B) of the NDPS Act. It was alleged that on 20.05.2015 they were alleged to have found transporting 50 Kg. of Ganja and they were prosecuted in Sessions Trial No. 18/2015 before the Special Judge (Under NDPS) Raigarh. The Trial Court after conclusion of the trial released them vide order of acquittal dated 22.12.2016 and further ordered for initiating confiscation proceedings and auction of the vehicle in case appeal is not preferred against the said order and in case appeal is preferred order of the Appellate Court shall be binding so far as the seized article is concerned.
6. True it is that once when the order of acquittal has been passed in favour of the Appellant, the Court below should not have ordered for confiscation of the said vehicle. It should have been released to the original owner. Further since the actual owner of the vehicle did not put any claim before the Trial Court neither furnished any document to show her ownership, would not preclude the Applicant from putting up his claim later on.
7. Further that the Appellant claiming herself to be the actual owner of the said vehicle has now moved this appeal against the said order, this Court thus allowing the appeal directs that the

Appellant shall be at liberty to move an appropriate application for release of said the vehicle before the trial Court. Subject to the satisfaction of the Court below in respect of the ownership, the vehicle may be released to the Appellant upon furnishing an appropriate bond and guarantee to the satisfaction of the Court below for return of the said vehicle. In the bond she shall give an undertaking that she shall not change the ownership of the vehicle nor shall she change the colour of the vehicle neither shall she create a third party right or interest over the said vehicle. She shall further undertake to produce the vehicle to any competent authority under different statutes as and when required. So far as surety is concerned, it shall be equal to the present day value of the vehicle seized to the satisfaction of the concerned Trial Court.

8. With the aforesaid observation the present Appeal stands disposed off.

Sd/-

(P. Sam Koshy)  
**JUDGE**