

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 943 of 2017

Sitaram Shrivastava S/o Kishanlal Shrivastava Aged About 52 Years,
Occupation- Labour, R/o Sindhi Colony, Kharsiya, Police Station
Kharsiya, Civil And Revenue District Raigarh, Chhattisgarh.

--- Appellant

Versus

State Of Chhattisgarh Through District Magistrate, Raigarh, District
Raigarh, Chhattisgarh.

--- Respondent

For appellant – Shri Sunil Sahu, Advocate.
For Respondent/State – Shri Sangarsh Pandey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

3/10/2017

Heard.

1. Instant appeal is against the order dated 7/02/2017 passed by the Special Judge (NDPS Act), Raigarh, District Raigarh (C.G.) in Special Case No.N.D.P.S. Act/206100000/08/2016.
2. Brief facts involved in this case are that, appellant herein who claims to be the owner of vehicle bearing number CG 13 N 9488. As per the prosecution case, on 30/01/2016 the appellant was carrying 6 kg cannabis and was being intercepted. Thereafter, after investigation charge sheet was filed under section 20(b)(II)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985. The trial was commenced and eventually the appellant was acquitted by the order dated 7/02/2017 wherein learned court below has directed for confiscation of the Hero Honda Motorcycle bearing number CG 13 N 9488 on the ground that no

one has claimed it.

3. Learned counsel for the appellant would submit that since acquittal order have been passed in favour of the appellant and as per prosecution the vehicle was seized from the possession of the present appellant, since conviction has not been affected, therefore he is entitled to get back his vehicle as without any rhyme or reason the order for confiscation cannot be passed.

4. Learned State counsel opposes the prayer.

5. Perused the order dated 7/02/2017. Perusal of the order would show that learned court below while adjudicating the case has come to a conclusion that prosecution has failed to prove the fact that seized article were proved to be cannabis as it did not tallied with sample which was seized and alleged to have been sent for FSL. Consequently, taking into inconsistency in the statement of the witnesses acquittal order was passed. In the same acquittal order it was directed that since no claim has been made by anyone in respect of the vehicle so seized which was alleged to be carrying cannabis it was directed to be confiscated.

6. Section 60 sub-section (3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads that any animal or conveyance used in carrying any narcotic drug or psychotropic substance shall be liable for confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge of the owner. In the instant case, the seizure of the motorcycle was made by Ex.P-17 alongwith other alleged cannabis. Order of acquittal would show that court has disapproved version of the prosecution that goods which was seized was narcotic drug or psychotropic substance. It is also not in dispute that the vehicle which was directed to be confiscated was seized from the appellant.

7. Section 452 of Cr.P.C. reads as under:-

“452. Order for disposal of property at conclusion of trial.

[\(1\)](#) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

[\(2\)](#) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

[\(3\)](#) A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

[\(4\)](#) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

[\(5\)](#) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.”

8. In case of **N. Madhavan Vs. State of Kerala** reported in **AIR 1979**

SC 1829 the principle has been laid down that after an inquiry or trial

when the accused is discharged or acquitted, the court should normally restore the property, which is produced before it or which is in its custody, to the person from whose custody it was taken. Departure from this rule of practice is not to be lightly made when there is no dispute or doubt that the property was seized from the custody of such accused and belonged to him.

9. In the instant case, admittedly the vehicle was seized from applicant. Further since acquittal order has been recorded, therefore it would infer that no offence has been committed under the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 60 sub-section (3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 speaks about that if any conveyance is used in carrying narcotic drug or psychotropic substance can be confiscated. However, when the court has come to finding that the prosecution has failed to prove that goods which were seized were narcotic drug or psychotropic substance then provisions of Section 60 sub-section (3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 would not be applicable as the very sub stratum of applicability of Section 60 sub-section (3) has been taken away by the acquittal order.

10. Consequently, order of confiscation passed by the learned court below by its order dated 7/02/2017 is liable to be set aside. Appellant is entitled to get back possession of the vehicle provided if he proves his ownership in respect of the vehicle. If the appellant so advised may file necessary application before the trial court and in such case, trial court after satisfaction of the proof that the appellant is the owner may proceed in the matter by imposing necessary condition and possession of the vehicle may be handed over to the appellant.

11. With such observation, appeal stands disposed of.

Sd/-

(Goutam Bhaduri)

Judge

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