

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41290 of 2016

Arising Out of PS.Case No. -9 Year- 2016 Thana -GOVERNMENT OFFICIAL COMP. District-
MUZAFFARPUR

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Praveen Kumar Bhagat son of Prithvi Chand Bhagat, resident of A.T. Road, P.O.-
Panbazar, P.S.- Fancy Bazar, Poonam Palace, Flat No. 02/ND, Guwahati, Assam.

.... Petitioner/s

Versus

1. The Union of India.
2. Ajay Kumar, Intelligence Officer, Directorate of Revenue Intelligence,
Muzaffarpur.
3. Malkit Singh son of Mahindar Singh, resident of 198 Swami Dayanand Colony,
Kishanganj, Delhi, at present residing at House No. 165, Gali No.2, Upper
Ground Floor, Himgiri Enclave, Part A-11, Near Pepsi Gali, Barari, Delhi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	: Mr. Kumar Uday Singh, Advocate
For the Opposite Party nos. 1 and 2	: Smt. Renuka Sharma, Advocate
For the Opposite Party No.3	: Mr. Sudhir Kumar Singh, Advocate
For the State	: Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 04-01-2018

Heard learned counsel for the petitioner, learned counsel for
the Union of India and learned counsel for the opposite party no.3.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'the Cr.P.C.') has been filed for
quashing the order dated 28.06.2016 passed by the learned Sessions
Judge-cum-Special Judge, Muzaffarpur in DRI (NDPS) Case No.09
of 2016 whereby the petitioner's application for release of his old
plastic waste and old broken steel scrap weighing 1400 kgs. which
were seized along with 302.420 kgs. Ganja from the truck bearing



registration no.HR-63A-6545 has been rejected.

3. The DRI (NDPS) Case No.09 of 2016 was registered on 12.02.2016 on the basis of written complaint made by one Ajay Kumar, Intelligence Officer, DRI, Muzaffarpur.

4. The complainant alleged that the officers of the DRI, Regional Unit, Muzaffarpur intercepted a Tata Truck (container body) bearing Registration No.HR 63A 6545 on 11.02.2016 at Chakia Toll Plaza, Motihari acting upon a secret information. The said truck was being driven by one Wakeel Kumar. On search, twenty nine packets containing substance believed to be Ganja loaded in a specially built secret cavity on the hood of the cabin of the said truck were recovered. The gross weight and net weight of the packets was found 302.42 Kgs and 297 Kgs respectively. The Ganja was valued at Rs. 11,88,000/- and the truck in question was valued at Rs. 5,30,000/-. The Ganja recovered from the truck was seized and a seizure list was drawn in presence of the witnesses and the accused Wakil Kumar was arrested in exercise of powers conferred under Section 43(b) of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') having reason to believe that he is liable for punishment under Sections 20, 25 and 29 of the NDPS Act for violation of Section 8(c) of the said Act.

5. Learned counsel for the petitioner submitted that the



petitioner is owner of the old plastic waste and old broken steel scrap. He has not been made accused in the present case. He submitted that from the statement of the accused driver recorded under Section 67 of the NDPS Act, it would be evident that the petitioner had no concern with the alleged offence. He submitted that the application filed by the petitioner for release of old plastic waste and old broken steel scrap has been rejected taking into consideration Section 60(2) of the NDPS Act and in view of the fact that huge quantity of Ganga was recovered from the seized truck. It is submitted by the learned counsel for the petitioner that till date no confiscation proceeding has been initiated by the Special Judge, Muzaffarpur in the aforesaid DRI Case for confiscation of old plastic waste and old broken steel scrap. He submitted that the truck in question has also been released in favour of the owner Malkit Singh by this Court vide order dated 18.09.2017 passed in Cr. Misc. No.37265 of 2016 and the owner of the truck has no claim over the property in question.

6. Learned counsel appearing for the opposite party no.3, Malkit Singh, the owner of the truck bearing registration no.HR-63A-6545, submitted that the old plastic waste and old broken steel scrap recovered and seized from the aforesaid truck belongs to the petitioner and the owner of the truck does not claim any right over the property. He submitted that opposite party no.3 has no objection if the said



property is released in favour of the petitioner.

7. Learned counsel for the Union of India opposed the prayer of the petitioner. However, he also admitted that till date no confiscation proceeding has been initiated for confiscating the seized articles.

8. I have heard learned counsel for the parties at length and carefully perused the record.

9. The horrifying situation of the case property such as vehicles, machines etc. found lying in police station premises and Court premises and ultimately becoming junk and losing their value engaged attention of the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat, [(2002)10 SCC 290]**.

10. In the aforesaid case, after examining the scope of Sections 451 and 457 of the Cr.P.C., the Supreme Court held that the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously.

11. In paragraphs 5 and 7 in **Sunderbhai Ambalal Desai** (Supra), the Supreme Court observed as under:-

“5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise dispose of, after recording such evidence as it



thinks Necessary;

- (3) if the property is subject to speedy and natural decay to dispose of the same.

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7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

12. The provisions prescribed under Sections 451 and 457 Cr.P.C. were once again considered by the Supreme court in **General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors.** [(2010) 6 SCC 768]. After taking note of the directions given by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat** (supra) in **General Insurance Council vs. State of Andhra Pradesh** (supra), the Supreme Court noticed that police, investigating as well as prosecuting agency were not taking adequate steps for compliance of the directions, which has resulted in loss of assets worth several



hundred crore and recovered articles were reduced to junk by the time they are released. It gave further directions in this regard.

13. Coming back to the facts and circumstances of the present case, it would be evident that in the FIR registered under Section 20, 25 and 29 of the NDPS Act, the petitioner has not been made accused. He filed an application for release of the old plastic waste and old broken steel scrap seized in the case which was rejected vide impugned order dated 28.06.2016 on the ground that under Section 60(2) of the NDPS Act the goods would be liable for confiscation.

14. Admittedly, no confiscation proceeding has been initiated in the matter till date. The truck from which goods was recovered has also been ordered to be released by this Court in favour of the owner of the truck.

15. In the opinion of this Court while considering the application for release of the goods in question, the learned Sessions Judge-cum-Special Judge, Muzaffarpur in DRI (NDPS) Case No.09 of 2016 did not appreciate the statutory provisions contained in Chapter XXXIV of the Cr.P.C. and the ratio laid down by the Supreme Court in *Sunderbhai Ambalal Desai (supra)* and *General Insurance Council and Ors. (supra)*. The non-compliance of the directions of the Supreme Court in the aforesaid decisions is not



permissible.

16. Keeping in mind the discussions made hereinabove and the ratio laid down by the Supreme Court in the decisions discussed above, the impugned order dated 28.06.2016 passed by the learned Sessions Judge-cum-Special Judge, DRI (NDPS), Muzaffarpur cannot be sustained. Accordingly, it is set aside.

17. The court below is directed to release the old plastic waste and old broken steel scrap in favour of the petitioner on furnishing bond of rupees twenty thousand of the like amount each to the satisfaction of the court below.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.01.2018
Transmission Date	08.01.2018

