

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.382 of 2016

Arising Out of PS. Case No.-206 Year-2015 Thana- CHIRAIYA District- East Champaran

Shyam Nandan Thakur Son of Late Kedar Nath Thakur, R/o Dhobouli, P.S. -
Katra, District - Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner : Mr. Prakash Tiwari, Advocate
: Mr. Anand Tiwari, Advocate
: Mr. Mahesh Kumar, Advocate
For the Respondents : Mr. Nirmal Kumar Sinha(App)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 23-04-2018 The vehicle of the petitioner viz. a motorcycle bearing Registration No. BR-06Y-3272 was seized in connection with Chiraiya P.S. Case No. 206/15 instituted for the offences under Sections 20,22,23 and 24 under the Narcotic Drugs and Psychotropic Substances Act, 1985.

The petitioner is the registered owner of the said motorcycle. On 19.09.2015, from the possession of the petitioner who was riding the aforesaid motorcycle, 5 Kgs. Ganja was recovered.

It has been submitted on behalf of the petitioner that he was granted bail in the aforesaid case by order dated 30.01.2016 passed in Cr. Misc. No.57982 of 2015. A prayer thereafter, was made



before the Court below for release of the motorcycle which was seized at the time of the arrest of the petitioner. The Court below vide order dated 18.03.2016 rejected the prayer of the petitioner on the ground that the vehicle was being used for carrying contraband/narcotics which was liable for confiscation under Section 60(1) of the NDPS Act.

Section 60 of the NDPS Act, reads as follows:

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation. - (1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.]

(2) Any narcotic drug or psychotropic substance lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance



[or controlled substances] which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance [or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substance], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscations, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

Section 63 of the NDPS Act provides for the procedure in making confiscations. From a reading of the



provisions contained in Section 63 of the NDPS Act, it becomes quite apparent that it does not matter whether an accused is convicted, acquitted or discharged for confiscation.

By way of supplementary affidavit, learned counsel for the petitioner has submitted that the confiscation proceedings in this case have not yet been initiated.

Learned counsel for the State, however has submitted that since the vehicle in question was being used for transporting the narcotics/contraband, it was liable for confiscation. That apart, it has also been submitted that the petitioner himself was riding the motorcycle who was found to be in possession of intermediate quantity of ganja. In that event releasing the vehicle in his favour would not be proper, as it would only prod the petitioner from committing the offence again.

Learned counsel for the petitioner has however submitted that the implication of the petitioner in the present case is *mala fide* and he has been made victim of the circumstances.

Section 451 of the Code of Criminal Procedure, 1973 provides for the procedure whereby a court can order for custody or disposal of the property pending trial in certain cases.



Section 451 reads as also:

451. Order for custody and disposal of property pending trial in certain cases. - *When any property is produced before any Criminal Court during inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.*

Explanation.- For the purposes of this section, "property" includes-

- (a) property of any kind or document which is produced before the Court or which is in its custody,*
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.*

Keeping in mind the provisions contained in Section 451 of the Cr.P.C. referred to above, the Supreme Court in *Sunderbhai Ambalal Desai vs. State of*



Gujarat 2003 (2) PCCR 36 has observed as follows:

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

20. Similarly for the Narcotic Drugs also, for its identification, procedure under Section 451, Cr.P.C. should be followed of recording evidence and disposal. Its identify could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

(emphasis provided)

The aforesaid view of the Supreme Court was based on the decision rendered in Smt. Basaavva Kom Dyamangouda Patil vs. State of Mysore & Anr., (1977)



4 SCC 358. In the aforesaid case, the Supreme Court was beset with a situation where the seized articles were not available for being returned to the complainant.

In the aforesaid case, the Supreme Court observed as follows:

8. The question of proper custody of the seized article is raised in number of matters. In Smt. Basaavva Kom Dyamangouda Patil vs. State of Mysore & Anr., (1977) 4 SCC 358, this court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what



is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High court and the Sessions Judge proceeded on the footing that one of the essential requirements of the code is that the articles concerned must be produced before the court or should be in its custody. The object of the code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the



Court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance".

Regard being had to the aforesaid facts and circumstances, it appears to this Court that no useful purpose would be served in keeping the vehicle in question in the custody of the police. There is definitely a possibility of the vehicle being used again for crime but for such possibility, a vehicle, which could be put to any use, cannot be allowed to be rendered useless as it would be a national wastage also. For preventing the vehicle from being used for committing any offence of similar kind, it would only be desirable that a stringent condition be imposed upon the petitioner for preventing him from using such vehicle for any illegal/unauthorized purposes and further directing him not to dispose of the property till the disposal of the case so that it could be presented before the concerned Court as and when required during the prosecution of the trial of the



aforesaid case.

Keeping in view the aforesaid aspects of the matter, the order dated 18.03.2016 passed by the Learned Sessions Judge/Special Judge, Motihari passed in NDPS Case No. 51 of 2015 is set aside.

The Special Court is directed to release the vehicle in favour of the petitioner after ascertaining that he is the rightful owner and after obtaining an undertaking from him that he shall not dispose of the vehicle till the final disposal of the case.

The undertaking of the petitioner shall also include that in case it is found that the vehicle is being used for any unauthorized/illegal purpose, the same shall immediately be confiscated and shall not be released to him under any circumstance.

With the aforesaid direction, the present revision petition is disposed of.

(Ashutosh Kumar, J)

Krishna/-
Rahul Mishra

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