

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.493 of 2018

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Vindhyawasini Narayan Prasad, Son of Ram Awatar Rai,
resident of Village- Kandawa, Amara Chandauli, P.S.-
Kandawa, District- Chandauli (U.P.)

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Union of India.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Mouar

For the Respondent/s : Mr. Sri Jitendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 12-07-2018 The petitioner is aggrieved by the order dated 13.04.2018 passed by the learned Special Judge, N.D.P.S-cum-District & Sessions Judge, Patna in connection with Special Case No. 7 of 2018, arising out of F. No. NCB/PZU/V/04/2018 whereby 420 bags of star cement which was loaded on the truck carrying narcotics has been refused to be released in his favour.

The learned counsel for the petitioner has submitted that he had purchased the aforesaid bags of cement from Assam which was loaded on the vehicle in question to be delivered at Star Cement, Fatuha. On way, the driver of the vehicle who has been made accused in the present case, on the asking of somebody else, loaded *ganja*. The vehicle was



intercepted and on recovery of *ganja*, the driver of the vehicle was arrested and the vehicle was seized.

From the records of this case, it becomes very clear that the aforesaid bags of cement were not used for the purposes of concealing the *ganja*. The petitioner is a *bona fide* purchaser of the aforesaid bags of cement which was to be transported and, for that purpose, it was loaded on the aforesaid vehicle.

Sections 60 and 61 of the Narcotic Drugs & Psychotropic Substances Act, 1985 specify the conditions under which the animal or any article used for carrying the narcotic drugs and psychotropic substance or any article is liable for conviction. Sections 60 and 61 of the Act read as hereunder.

"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 substance] 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 substance] 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.

61. Confiscation of goods used for concealing illicit drugs or substances.-*Any goods used for concealing any [narcotic drug, psychotropic substance or controlled substance] which is liable to confiscation under this Act shall also be liable to confiscation."*

The reason assigned by the learned Special Judge in not releasing the bags of cement in favour of the petitioner, therefore, is not sustainable in the eyes of law.

The order dated 13.04.2018 passed by the learned Special Judge, NDPS Act-cum-District & Sessions Judge, Patna in connection with Special Case No. 7 of 2018, arising out of F. No. NCB/PZU/V/04/2018 is, therefore set aside.

The learned Special Judge is directed to pass a fresh



order in accordance with law after being satisfied that the petitioner had purchased the aforesaid bags of cement for consideration and had no idea that the vehicle on which the cement was loaded for being transported to Fatuha would be used for carrying/transporting the narcotic substance.

The learned Magistrate shall also verify whether the petitioner has been made accused in this case and only thereafter shall pass the order. The aforesaid order be passed within a period of thirty days of the receipt/production of a copy of this order.

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

(Ashutosh Kumar, J)

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