

HONOURABLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL PETITION No. 1302 of 2009

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the first respondent.

The present criminal petition is filed challenging the judgment passed in NDPS SC No.53 of 2004 dated 6.09.2008 on the file of the Court of the Additional Sessions Judge, Nizambad to the extent of Tempo Trax No. MH-17-PO-334 (M.O.2) along with M.Os.3 and 4 (R.C.Book and Insurance Policy).

The case of the prosecution in a nutshell is that on 13.04.2004 the Excise Officials of Saloora Check Post have received reliable information regarding illegal transportation of ganja from Andhra Pradesh to Maharashtra. Whereupon, PW-3 and Sri Md.Mazhar Hussain, Prohibition & Excise Sub-Inspector, Saloora have secured the panchas and started checking the suspected passengers as well as the vehicles which were going from the said Saloora Check Post of Bodhan Mandal. During the said checking, at about 5.45 p.m. one Tempo Trax No. MH-17-PO-334 arrived at the check post from Bodhan side and going towards Maharashtra State. The Excise officials have stopped the said vehicle and found two persons travelling in the said vehicle. They are A-1 and A-2. They were served with the search memo and when the vehicle was checked, they found 100 kgs. of ganja in different colour packets. On questioning, the said persons failed to produce any licence or

permit for possession and transportation of the said ganja. Immediately, a case was booked vide COR No.9/2004-05 under Section 8 (c) r/w Section 22(b) of N.D.P.S. Act, 1985 of Excise Station, Bodhan. After investigation, a charge sheet is filed. Thereafter, the case is numbered as NDPS SC No.53 of 2004. During the course of trial, the prosecution examined PWs.1 to 4 and marked Exs.P-1 to P-7 and M.Os.1 to 4. After completion of prosecution evidence, they were examined under Section 313 Cr.P.C. by explaining the incriminating circumstances appearing against them in the prosecution evidence. After hearing, the accused pleaded not guilty and they have not filed any written statement nor examined any witnesses on their behalf. After hearing, the Court below, was pleased to hold that the prosecution miserably failed to establish the charged offence against the accused and they were found not guilty for the offence punishable under Section 8 r/w 20(b) of N.D.P.S. Act, 1987 and accordingly acquitted under Section 235(1) Cr.P.C. by judgment dated 06.09.2008. However, M.O.2 Tempo Trax which was handed over to the police on 16.06.2004 is ordered to be confiscated to the State by way of public auction and the sale proceeds shall be remitted to the Government Treasury. M.Os.3 and 4 shall be handed over to the bidder who purchased the M.O.2 in the auction. Aggrieved by the extent of confiscating the Tempo Trax vehicle (M.O.2) along with M.Os.3 and 4, the present criminal petition is filed.

The learned counsel appearing for the petitioner contended that the Court below on mere assumptions and conjectures confiscated the vehicle (M.O.2). When A-1 and A-2 are not found

guilty for the offences under which they are charged, the question of confiscation of M.O.2 does not arise. There is no evidence of independent witnesses. However, if the evidence of PW-3 is taken into consideration, the ganja was not seized from the possession of the accused in the presence of any Gazetted Officer, as such, the question of confiscation of the vehicle also may not arise. Though the Court below ordered for release of the vehicle vide CrI.M.P.No.1026 of 2004, the same could not be released on the ground that the bank guarantee of Rs.1,50,000/- ordered to be furnished, was not complied with by the owner of the vehicle due to his weak financial position.

Per contra, the learned Public Prosecutor submitted that this is not a case where the indulgence of this Court should be shown since the contraband in the form of ganja seized is 100 kgs. being transported in the subject vehicle. It is a serious offence and therefore, the vehicle cannot be released.

A perusal of the facts and material on record discloses that the impugned judgment in the present criminal petition is appealable. In fact, this Court on 02.08.2012 after hearing the learned counsel for the petitioner, permitted him to carry out the necessary corrections to convert this case into an appeal under Section 454 Cr.P.C. However, the said order is not complied with and office has endorsed on 28.11.2013 to the effect that steps for conversion of the petition is not taken by the counsel. That apart, the evidence of PWs.1 and 2 who are the panch witnesses deposed that they do not know anything about the case and the accused,

long back excise police obtained their signatures on some white papers, and they do not know what was drafted on it. However, they identified their signatures on the panchanamas marked as Exs.P-1 and P-2. But, PW-3 was the Excise Sub-Inspector, Saloora Check Post, he deposed that they seized ganja from the subject vehicle, but A-1 and A-2 failed to produce any licence to transport the said ganja. Thus, the undisputed fact is that 100 kgs. of ganja has been seized from the subject vehicle. Though PWs.1 and 2 deposed that they do not know about the case nor the presence of the accused, may enure to the benefit of A-1 and A-2, but as far as the subject vehicle which is carrying the contraband will have to be adjudicated independently based on the evidence available on record. Thus, as submitted by the learned Public Prosecutor, the seized contraband i.e. 100 kgs. of ganja is a huge quantity which has to be seriously viewed. Therefore, when once it is brought on record that the said ganja is being transported in the subject vehicle and when the prosecution has let in evidence that the said contraband is seized from the vehicle, the same cannot be released. Be that as it may, though this Court on 02.08.2012, permitted the learned counsel for the petitioner to convert the present criminal petition into an appeal, it is not complied with and even on merits, it is found that the vehicle is not liable to be released. As such, on both these grounds, the criminal petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

P. KESHA VA RAO,J

Date:18.04.2018
Ccm



HONOURABLE SRI JUSTICE P. KESHAVA RAO



CRIMINAL PETITION No.1302 of 2009

Date:18.04.2018

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