

CRA-S-2858-SB of 2017 (O&M)

Manoj Kumar
#1# 18.02.16 12:00
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRA-S-2858-SB of 2017 (O&M)

Date of Order: 12.02.2018

Saleem

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Arnav Sood, Advocate for the appellant.

Mr.J.S. Walia, Sr. DAG, Punjab.

AMOL RATTAN SINGH, J (ORAL)

Crl.M.No.24985 of 2017

For the detailed reasons stated in the application, which is supported by an affidavit, the same is allowed. The delay of 27 days in filing the appeal is condoned.

Main case

By this appeal, the appellant has challenged the order dated 08.5.2017 passed by the learned Addl. Sessions Judge, Hoshiarpur, confiscating the truck owned by the appellant, bearing registration no.HR-54-A-8902, which, it is stated, was apprehended by the police with 60 bags of poppy husk recovered from it as per FIR No.79 dated 30.7.2013, registered at Police Station Mehtiana, District Hoshiarpur at 3.00 a.m on 30.7.2013, alleging therein the commission of an offence punishable under

Section 15 of the NDPS Act.

Learned counsel for the appellant submits that the appellant even as the owner of the truck was never arraigned as an accused and it was only four other people, i.e Mukhtiar Singh, Naseeb Chand @ Pamma, Satwinder Singh @ Laddu and Mustkeen son of Faqrudeen @ Faqru, who were so arraigned, as regards the recovery of the contraband. He submits that all four accused were acquitted by the Judge, Special Court, Hoshiarpur, vide his judgment dated 09.11.2015, a copy of which is annexed with the present appeal as Annexure P.1.

He further submits that as a matter of fact, the appellant had got lodged FIR No.117 dated 29.7.2013, at Police Station Garhpukhta, District Shamli (U.P.), stating therein that his driver Mustkeen (one of the accused in FIR No. 79 dated 30.7.2013), had taken the vehicle away about a month earlier and he was supposed to come back and in fact had rung him up a few days earlier stating that he would be coming back soon.

However, the mobile phone of the said driver-Mustkeen was thereafter found to be switched off whenever the appellant tried to contact him, but subsequently again he is alleged to have rung up the appellant, stating that he would get the vehicle back as and when he wished.

Learned counsel for the appellant submits that the said FIR having been registered on 29.7.2013, with the recovery shown to have been made on 30.7.2013 as per FIR No.79 registered at Police Station Mehtiana, District Hoshiarpur, the appellant, in any case cannot be connected with the recovery, even if the learned

Judge of the Special Court, while acquitting the accused vide his judgment dated 09.11.2015, did not disbelieve the recovery itself from the truck.

Per contra, learned State counsel submits that in fact a specific direction was given by the trial Court in the case registered under the provisions of NDPS Act, that proceedings to forfeit the vehicle be initiated, thereby leading to the impugned order dated 08.5.2017, of the learned Addl. Sessions Judge, Hoshiarpur.

Thus, the contention is that the recovery not having been doubted by even the Special Court, the confiscation of the vehicle is mandatory in terms of Section 60 of the NDPS Act, 1985 (for short "the Act").

In rebuttal, learned counsel for the appellant relies upon sub section (3) of Section 60 of the Act, to contend that where the owner of the vehicle concerned can prove that any narcotic substance that was being carried in the vehicle owned by him, was not to his knowledge, the mandate contained in sub sections (1) & (2) of Section 60 of the Act, would not apply.

Having considered the aforesaid arguments, though it may possibly be correct as has been held by the learned Addl. Sessions Judge vide the impugned order, that the appellant actually had knowledge of the vehicle being used in the crime in question, as the FIR was got registered by him only one day prior to the vehicles' apprehension, because he has stated in the FIR that the vehicle been taken away one month earlier, however, in my opinion, the appellant deserves the benefit of doubt of not having

such knowledge, in view of the fact that in the FIR registered at Police Station Garhpukhta, District Shamli (U.P.), it has been specifically stated that the driver was supposed to return the vehicle after a particular period of time and had in fact informed the appellant (owner of the vehicle) that he would be returning shortly but thereafter did not return.

Consequently, though the version of the appellant could actually be completely an afterthought, however, giving the benefit of doubt of not having knowledge of the vehicle being used for carrying the contraband, and as the FIR registered at his instance is one day prior to apprehension of the vehicle, and the appellant was not even arraigned as an accused as regards the recovery of the contraband, the present appeal is allowed and the impugned order dated 08.5.2017 is set aside.

February 12, 2018
manoj

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No