

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.37607 of 2019

In

CRIMINAL REVISION No.366 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

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Tejinder Singh, male, aged about 41 years, Son of Late Janak Singh, Resident of House No.274, Near Tent Gurdwara Preet Nagar, Jammu City, Gangyal, Jammu- 180010

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.

For the State : Md. Aslam Ansari, APP

For the NCB : Mr. Anshay Bahadur Mathur, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

6 09-07-2019 The petitioner, who is the authorized representative of one Jagjeet Kaur, widow of Prithipal Singh/the owner of the vehicle/truck in question, has challenged the order dated 31.01.2019 passed by the learned Special Judge, Patna in Special Case No. 4 of 2019, whereby the request for release of the vehicle in question has been rejected.

2. It appears that a vehicle/truck, bearing



Registration No. JK02AV/6179, was seized at Bakhtiyarpur and on search, 766 Kilograms of of Ganja was recovered. The aforesaid vehicle/truck contained rubber sheets also. The driver of the vehicle/truck, viz., Jasvinder Singh, made a statement under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 that he is the driver of the truck who has purchased the vehicle/truck in question, but the ownership has not been transferred. He has further stated that the vehicle in question has been given to a logistics company, viz., B.L.R. Logistics (I) Ltd. and the rubber sheets were loaded by him at Agartalla to be taken to Ludhiana. It was at Agartalla only, that he agreed to load 766 kilograms of Ganja for which he was paid Rs. 1,00,000/-.

3. The aforesaid logistics company also challenged the order dated 31.01.2019, whereby the rubber sheets were refused to be released.

4. A Bench of this Court *vide* order dated 12.03.2019, passed in Cr. Revision No. 224 of 2019, has directed for the release of the rubber sheets which was also



seized along with the narcotic substance.

5. The learned counsel for the petitioner has submitted that the confiscation proceeding has not been initiated by the Special Court, which statement has not been denied by the learned counsel appearing for the Narcotics Control Bureau. It has further been submitted that no useful purpose would be served in keeping the vehicle/truck in the custody of the Court as it loose all its value. The petitioner, who is the authorized representative of widow of Prithipal Singh, who owned the vehicle/truck, submits that he is ready to furnish any surety for bringing back the vehicle in question, whenever it would be required.

6. The First Information Report does not state anything which would dispel the submission on behalf of the petitioner that the owner of the vehcile/truck did not know about such narcotic having been loaded by the driver at Agartalla.

7. Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*in short the N.D.P.S. Act*) imposes a liability of any illicit drugs, substances,



plants, articles and conveyances to confiscation. Section 60 (3) of the N.D.P.S. Act delineates that a vehicle or other articles are liable to be confiscation, unless it is proved by the owner of such conveyance that it was used without the knowledge or connivance of the owner himself or his agent. Section 63 of the N.D.P.S. Act deals with the procedure for making confiscations and from the wordings employed thereof, it clearly appears that it matters not whether an accused is convicted, acquitted or discharged, the Court will decide whether the articles so seized is liable to confiscation under Sections 60 to 62 of the N.D.P.S. Act and if it decides that it is so liable, it may order confiscation accordingly.

8. In the present case while rejecting the application for the release of the vehicle/truck in question, the Special Court has not at all adverted to any reason for him to come to the opinion that there was any complicity of the owner of the vehicle for the offence to be committed. The aforesaid aspect has not at all been taken into account by the learned Special Court.

9. The learned counsel appearing for the Narcotics



Control Bureau, however, has opposed the aforesaid contentions and has submitted that the case is still under consideration of the Court and, therefore, it would not be proper to release the vehicle in question in favour of the petitioner.

10. The provisions in the Code of Criminal Procedure, 1973 (especially Sections 451, 452 and 457) as also in the N.D.P.S. Act, 1985 for the confiscation or release of the vehicle/article has been incorporated, keeping in mind the necessity for such provisions for not allowing a vehicle or any perceptible thing to go waste. Necessary/requisite conditions are required to be fulfilled before such powers of release can be exercised by the Courts below.

11. In the present case, the Special Court has not at all referred to this aspect of the matter and has, in a blanket/mechanical manner, rejected the prayer for release of the vehicle. Even if a statement has been made by the driver of the vehicle that the vehicle is about to be purchased by him, this by itself would not indicate that the ownership has been transferred and that the owner or the



authorized representative had any knowledge about such contraband substance being carried along with other substance in the vehicle in question.

12. For the aforesaid reasons, *viz.*, non-application of mind of the Special Court, the impugned order dated 31.01.2019 is set-aside.

13. The matter is remitted to the learned Special Court for writing out a fresh order in accordance with law. Should the Special Court, after hearing the parties, be of the view that the vehicle in question is required to be released, he shall release the same and would also consider imposing certain conditions for ensuring that the vehicle/truck is brought to the Court, should it be required during the course of the trial. In case, the vehicle/truck is released by the Court, it would be insisted upon that a bank guarantee of Rs. 3,00,000/- to the satisfaction of the Court be furnished along with a bond for return of the vehicle/truck to the Court as and when it is required.

14. The order shall be passed by the Court below, without any delay, preferably within a period of four weeks



of the receipt/production of a copy of this order.

15. With the aforesaid observation/direction, the application stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

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