

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1242 of 2018**

- Sanjay Pandey S/o Gopal Prasad Pandey, Aged About 86 Years, R/o- P.K. School, Gali No.1, Rewa, Madhya Pradesh., District : Rewa, Madhya Pradesh

---- Appellant**Versus**

- State Of Chhattisgarh Through- The Police Station Ratanpur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent

For Appellant : Mr. Atanu Ghosh, Advocate.

For Respondent/State: Ms. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15/03/2019

1. This appeal has been brought challenging the order dated 18-07-2018 passed by the Special Judge, N.D.P.S. Act, Bilaspur, District Bilaspur, C.G. in MJC No.15/18 connected with Special Criminal Case (N.D.P.S. Act, 1985) No. 136/15 decided on 15-02-2018 by the same Court.
2. Accused Sandeep Patel, Kaushlesh and Bhupendra Rawat were prosecuted in Special Criminal Case (N.D.P.S. Act, 1985) No. 136/15 for offence under Section 20(b)(ii)(C) of the N.D.P.S. Act, in which, Inova Car bearing registration No.HR/26-BD/9374 was seized by the police. The said car was given on interim custody to this appellant/applicant by the order of this Court in Criminal Revision No.671 of 2015. In the judgment of conviction passed by the Court below on 15-02-2018, it was ordered that confiscation of the vehicle shall be considered in separate proceeding. On

application filed by the respondent MJC No.15/18 was registered in which the impugned order has been passed ordering confiscation of the vehicle seized in the concerned case.

3. It is submitted by learned counsel for the appellant that no opportunity was given to the appellant to prove that the said vehicle was used by the accused persons without his knowledge and connivance, therefore, the order passed by the Court below is bad in law.
4. Learned counsel for the State/respondent opposes the grounds raised in this appeal and submits that it is burden on the owner of the vehicle to prove under the provisions of Section 60(3) of the N.D.P.S. Act, that the vehicle seized in transport of contraband was not used within his knowledge and under his connivance, therefore, the appeal may be dismissed.
5. Heard learned counsel for the parties and perused the record.
6. On perusal of the record of MJC No.15/18 (State Vs. Sanjay Pandey), it has appeared that all the proceeding has been concluded without giving any opportunity to either party for bringing any evidence in support of their claims. As it is requirement under Section 60(3) of the N.D.P.S. Act, that a person presenting claim on the vehicle seized in transport of the contraband has to prove that the vehicle was so used without his knowledge and his connivance, therefore, opportunity to bring evidence has to be necessarily given in such cases, therefore, I am of this opinion that the proceeding taken up by the Court below in MJC No.15/18 is not in accordance with law. Therefore, this appeal is allowed. The impugned order is

set aside and the case is remanded back to the Court concerned to reconsider on the case of confiscation proceeding, after affording opportunity to both the parties to bring evidence before the Court about their claims.

7. The appellant shall have the liberty to file application before the Court for interim custody of the vehicle, which may be considered and decided in accordance with law.
8. Parties are directed to appear before the Court below on 30-04-2019.

Sd/-
(Rajendra Chandra Singh Samant)
Judge