

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 73 of 2019**

- Ratnesh Lodhi S/o Dal Singh Aged About 31 Years R/o - Chourai, Thana - Damoh, Dehat District Damoh Madhya Pradesh., District : Damoh, Madhya Pradesh

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station - Dongripali, District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondent

For the Appellant : Shri Sanjay Agrawal, Advocate.

For the State/Respondent : Shri Samdarsh Nirankari, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

19/03/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 2.7.2018 passed by the Special Sessions Judge, Raipur in Special Case (NDPS) No. No.16/2016 whereby appellant has been convicted under Section 20(B)(2)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').
2. It is submitted that the appellant is registered owner of Maruti Car bearing registration No. MP51-CA/0120 and in support thereof, documents of vehicle have been filed along with appeal. It is further

submitted that the applicant did not prefer any claim before the Court below because of which in the judgment dated 2.7.2018 passed in Special NDPS Case under NDPS Act 16/2016 it is ordered that as there is no claim with respect to the vehicle under seizure, therefore, the same may be confiscated after the period stipulated for filing appeal. It is submitted that the order directing disposal of property passed has been passed by the Court below without complying with the provisions of Section 60 (3) of NDPS Act, therefore, the appellant is entitled for custody of the vehicle in question. Hence, it is prayed that his appeal be allowed.

3. Learned State counsel opposes the grounds raised in the appeal and submissions made in this respect. It is submitted that even if it is considered that the order passed by the Court below is not under the provisions of Section 60 (3) of the NDPS Act, then also it is a case of no claim by the appellant before the Court below, therefore, it is the Court below which has to first decide regarding entitlement of custody of appellant with respect to seized vehicle. Hence, no case is made out in favor of the appellant.
4. I have heard both the parties and documents present in record.
5. As it has clearly been mentioned in the impugned judgment that neither the registered owner nor accused had claimed custody of seized vehicle before the Court below and in absence of any such claim, the order of confiscation was passed. In such a situation, this Court cannot directly entertain the prayer made by appellant in this appeal in

exercise of appellate jurisdiction. The first jurisdiction to consider entitlement of the appellant is of the trial Court.

6. Consequently, the appeal is allowed with modification. Impugned order directing disposal of seized property after expiry of limitation of appeal against the impugned order is hereby set aside. The appellant is directed to appear before the Court below concerned and to file fresh appropriate application for grant of custody of seized vehicle to him. On such application being filed, the Court below shall consider and decide the same expeditiously, preferably within a period of three months from the date of filing of said application, in accordance with law.
7. Appellant is directed to appear before the Court below on **23rd April, 2019.**

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha