

18.02.2020

Court No.01
Item No.03
(Disposed Of)

akd

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT
JALPAIGURI**

CRR 107 of 2019

Deepak Kumar Sharma
Vs.
The State of West Bengal

Mr. Partha Pratim Sarkar.

...For the Petitioner.

**Mr. Aditi Shankar Chakraborty, Ld. A.P.P.,
Mr. Arun Sarkar.**

...For the State.

This criminal revisional application is directed against an order dated 19th November, 2018 passed in N.D.P.S. Case No. 72 of 2018 by the learned Additional Sessions Judge, 1st Court (NDPS), Cooch Behar.

Shorn of unnecessary details the brief facts of the case are that acting on source information the police apprehended two trucks, which were coming from Cooch Behar towards Mathabhanga and recovered commercial quantity of Ganja (more than 3 quintals) from the drivers' cabins. The trucks were seized. The drivers and khalsis were arrested. Criminal case was initiated under the N.D.P.S. Act, 1985.

There are four accused persons, being the drivers and khalsis of the two trucks. There is no case against the owners of the said trucks. Charge sheet has been filed. Trial has begun.

The owners applied before the learned Sessions Judge for return of their trucks. By the impugned order the learned Judge has rejected such application. Hence this criminal revisional application.

I have heard learned Counsel for the petitioner as well as learned Advocate for the State.

Learned Counsel for the petitioner has relied on several provisions of the N.D.P.S. Act, 1985 and has heavily relied on decisions of Co-ordinate Benches of this Court in CRR 1152 of 2015 (Ainul Haque vs. The State of West Bengal & Anr.); CRR 1252 of 2015 and CRR 382 of 2018 (Waish Ahmed vs. State of West Bengal).

In those decisions, the learned Judges have discussed several decisions of the Hon'ble Supreme Court pertaining to release of seized vehicle in exercise of power under Sections 451/457 of the Code of Criminal Procedure. The learned Judge in the impugned order has not referred to any judicial precedent to support his decision. His decision, in fact, runs counter to the principles laid down by this Court in the aforesaid cases as well as by the Hon'ble Supreme Court in different decisions, some of which have been taken note of in the aforementioned decisions of this Court. The principle that seems to emerge from the aforesaid decisions is that it will enure to nobody's benefit, if the seized vehicles are left in the custody of the police without putting them into use. The only result will be that with the passage of time, the vehicle would be reduced to junk. This cannot benefit anybody. The commercial vehicles are of considerable value and if they are allowed to be reduced to junk, valuable resources of the society will be wasted.

Following the ratio of the aforesaid decisions, I set aside the order impugned herein and direct the concerned police authorities to handover the concerned two trucks to the registered owners thereof subject to the owners furnishing unconditional irrecoverable Bank Guarantees of Rs.15,00,000/- for each of the trucks in favour of the authorized officer of the learned Court below. Such Bank Guarantees shall be furnished within four weeks from date. The vehicles shall be handed over to the respective registered owners within three days from the date of furnishing of such Bank Guarantees.

The said Bank Guarantees shall be kept renewed and alive till the disposal of the criminal proceeding in the learned Court below.

Handing over of the vehicles to the registered owners thereof shall be also subject to the condition that they will produce the same before the learned Court below as and when required to do so.

The vehicles shall not be disposed of until conclusion of the criminal trial.

The Criminal Revisional Application, being CRR 107 of 2019, is, accordingly, disposed of.

(Arijit Banerjee, J)