

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.28 of 2021

Arising Out of PS. Case No.-566 Year-2019 Thana- PURNEA SADAR District- Purnia

RAM KRISHNA DUTTA Son of Late Dinesh Chandra Dutta Resident of
Village- Milanpara Khuskibagh, P.S.- Sadar, Distt- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ashok Kumar the Intelligence Officer, DRI, Patna office of the Assistant Director, DRI, Patna. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amit Kumar Anand, Advocate
For the Respondent/s : Mr. Anant Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
C A V ORDER

8 16-04-2021 The present revision application has been filed against the judgment and order dated 07.10.2020 passed in Spacial Case No. 31/2019/CIS NDPS No. 31/2019 (NDPS Act) arising out of Sadar PS Case No. 566 of 2019 by the learned Sessions Judge, Purnea registered for the offence punishable under Sections 8, 21, 22(b) of the Narcotics Drugs and Psychotropic Substance Act (hereinafter referred to as the 'NDPS Act') whereby the learned Sessions Judge, Purnea rejected the prayer of the petitioner for releasing the vehicle i.e., blue colour Maruti Suzuki Dzire bearing Registration No. BR-11AK/1230 in favour of the petitioner pending trial or confiscation proceeding.



2. The brief fact giving rise to the revision application is that, on the basis of written report submitted by the PSI (Police Sub Inspector), Jitendra Rana, Officer Incharge, Sadar PS, an FIR was registered bearing Sadar PS Case No. 566/2019 stating therein that while police officers were on patrolling, they intercepted a blue colour Maruti Suzuki Dzire bearing Registration No. BR-11AK/1230. Upon seeing the police personnel, the driver of the said car tried to flee away with the vehicle but the police party stopped the vehicle and asked the persons sitting therein to come out and upon query, the apprehended accused persons disclosed that they have got smack (Brown sugar) with them in the vehicle. Upon search, the police party recovered smack from the possessions of Rohit Kumar Gupta @ Chhotu, Sanjay Kumar Rai and Tuntun Rishi. Police also recovered smack being kept inside the dash-board of the said car. As per seizure list, 13.30 Gms smack with polythene and a mobile were recovered from the possession of Rohit Kumar Gupta @ Chhotu, 13.70 Gms smack with polythene was recovered from Sanjay Kumar Rai, 13.70 Gms smack with polythene and a mobile were recovered from Tuntun Rishi and 12.25 Gms of smack was recovered from the dash-board of the car in question.



3. Learned counsel for the petitioner submits that petitioner is the owner of the seized vehicle i.e., blue colour Maruti Suzuki Dzire bearing Registration No. BR-11AK/1230 and the petitioner has not been accused in the present case. Learned counsel further submits that the said vehicle was being driven by the driver and he was not aware about the smack being kept inside the said vehicle. In support of his ownership, the petitioner has annexed the Registration Certificate at Annexure-2. Learned counsel further submits that the confiscation proceeding has not been initiated as yet and in view of Section 63 of the NDPS Act, the confiscation proceeding may not be initiated till the conclusion of the trial. However, learned counsel submits that the vehicle in question is kept in an open space in the police station and is subject to deterioration and losing its road worthiness on daily basis. Learned counsel further submits that petitioner is ready and willing to furnish security by way of bank guarantee of Rs. 3 Lacs for release of the said vehicle.

4. Learned counsel assailing the order of learned court below submits that the learned court below has failed to appreciate the legal provisions enshrined under Section 451 and 457 of the CrPC and the law laid down by the Hon'ble Apex



Court in the case of *Sunderbhai Ambalal Desai v. State of Gujarat* as reported in *(2002)10 SCC 283* as well as the judgment of a co-ordinate Bench of this Court as reported in *2021 (1) BLJ 374* passed in the case of *Jai Kishan Kumar v. Union of India*.

5. On the other hand, learned counsel for the State opposed the prayer of the petitioner for release of the vehicle in his favour during pendency of the trial or confiscation proceeding and submits that petitioner was having knowledge about the Narcotic Drugs & Psychotropic Substance being kept inside the car in question and the car was being used by the driver with the knowledge and connivance of the driver himself or his agent.

6. I have heard Mr. Amit Kumar Anand, learned counsel for petitioner and Mr. Anant Kumar, learned APP for the State through virtual mode and have also gone through the provisions prescribed in Code of Criminal Procedure as well as Section 60 of the NDPS Act. Section 60 of the NDPS Act reads as follows:-

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant,



cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance[or controlled substances]lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance[or controlled substances]which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance[or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

7. From perusal of Section 60, it appears that any conveyance used in carrying Narcotic Drugs & Psychotropic Substance is liable for confiscation, provided it is proved that the vehicle/conveyance was being used with the knowledge or connivance of the owner himself or his agent. In absence of any



such material, there cannot be any confiscation in the first instance.

8. Learned counsel for the petitioner has submitted that the petitioner was not aware about the smack being kept in the vehicle by the driver and there is no *prima facie* material on record to suggest that there was any complicity on the part of the petitioner.

9. In view of the aforesaid, now the question of release of the vehicle would be under the provisions of Sections 451 and 457 of the Code of Criminal Procedure (hereinafter referred to as 'the CrPC') which deal with the power of the Court to order for the disposal/custody of the property pending trial in certain case and the procedure by the police upon seizure of the property.

10. Sections 451 and 457 of the CrPC are being quoted hereinbelow:-

451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of

457. Procedure by police upon seizure of property.



(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

11. From perusal of the aforesaid provisions, it would appear that a Court is empowered to pass an appropriate order with regard to such property. The object and scheme of the various provisions of the CrPC, dealing with seizure of property by the police has been dealt with by the Apex Court in the case of ***Sunderbhai Ambalal Desai*** (supra) whereunder in paragraphs 5 and 7, it has been observed as follows:-

“5. Section 451 clearly empower the Court to pass appropriate orders with regard to such property, such as

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise dispose of, after recording such evidence as it thinks necessary;

(3) If the property is subject to speedy and



natural decay to dispose of the same

7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

12. In paragraphs-17 and 21 of the said judgment, the

Hon’ble Apex Court has observed as follows:-

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.C. are properly and



promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”

13. The Hon’ble Apex Court in the case of *Smt. Basavva Kom Dyamangouda Patil v. State of Mysore & Anr.* reported in (1977) 4 SCC 358 while dealing with the seizure of property by the police and the object and scheme of the various provisions of the CrPC has observed in para-4 as follows:-

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary, As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or



indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

14. The Hon’ble Apex Court in the case of ***General Insurance Council and Ors. v. State of Andhra Pradesh and Ors*** reported in ***(2010) 6 SCC 768***, has further directed to ensure implementation of statutory provisions as contained in Sections 451 and 457 of the CrPC so as to avoid natural decay on account of weather conditions of seized vehicle in police station and in paragraphs-11 and 14 has directed as follows:-

“11. Notice of the said petition was issued to all the States and Union Territories. Almost all the States have contended that they have already issued necessary guidelines and directions for full and complete compliance of the provisions contained in Sections 451 and 457 of the Code as elaborated in Sunderbhai Ambalal Desai (supra) as also under Section 158(6) of the M.V. Act and 159 of the Rules as directed in General Insurance Council case (supra). Thus, in one voice, they have contended that there would not be any difficulty in compliance of the directions that may be issued in furtherance of achieving the object as directed by this Court. Thus, in our view, there appears to be consensus in this matter.

14. It is a matter of common knowledge that as and when vehicles are seized and kept in



various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.”

15. I have also gone through the judgment passed by the co-ordinate Bench of this Court for release of vehicle as reported in the case of **Jai Kishan Kumar** (supra) and after going through the same, it appears that the learned single Judge after relying upon the judgments of Hon’ble Apex Court as reported in **Sunderbhai Ambalal Desai** (supra) has directed for release of motorcycle in favour of the petitioner with certain conditions.

16. In the aforesaid discussions and the law laid down by the Hon’ble Apex Court and that of this Court, I am of



the considered opinion that the learned court below has failed to exercise its jurisdiction in correct legal perspective and thereby committed material irregularity inasmuch as if the vehicle in question is allowed to be kept in open in the police station, it may lose its road worthiness due to natural decay on account of weather condition.

17. Accordingly, the judgment and order dated 07.10.2020 passed in Spacial Case No. 31/2019/CIS NDPS No. 31/2019 (NDPS Act) arising out of Sadar PS Case No. 566 of 2019 by the learned Sessions Judge, Purnea, is set aside and the learned court below is directed to release vehicle in question in favour of the petitioner after verifying the ownership/registration of the vehicle within a period of four weeks from the date of production/receipt of this order subject to the following conditions:-

(1) That the petitioner shall furnish bank guarantee of Rs. 3 Lacs to the satisfaction of the court,

(2) That before handing over the vehicle to the petitioner, a detailed and proper *Punchnama* of the said vehicle after taking its photograph, shall be prepared

(3) That the petitioner shall also execute bond that the vehicle in question shall be produced as and when required at



the time of trial or confiscation proceeding and

(4) That petitioner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the vehicle till pendency of the trial or confiscation proceeding, if any.

18. With the aforesaid directions and observations, the instant revision application stands allowed.

19. Needless to say that at the time of going through the aforesaid procedures for release of the vehicle, parties shall adhere to the covid protocol of social/physical distancing.

(Anil Kumar Sinha, J)

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