

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 28.10.2021

Judgment Delivered on : 24.11.2021

CRA No. 746 of 2018

- Vishnu Prasad Sahu, S/o Ram Prasad Sahu, Aged About 34 Years, R/o Village Karoudi, Police Station Sahaspura, District-Dindori, Madhya Pradesh.

---- Appellant

Versus

- State of Chhattisgarh, Through- The Station House Officer, Police Station Kanker, District- Kanker, Chhattisgarh. **---- Respondent**

For Appellant : Shri Sandeep Shrivastava, Advocate

For State/Respondent : Shri Anand Verma, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya

CAV JUDGMENT

- 1) The present appeal is against the judgment dated 21.07.2017 passed by the Special Judge (NDPS) Act, North Bastar, Kanker in Special Criminal Case No. 57/2016 whereby though all the accused persons including the appellant have been acquitted of the charge under Section 20 (b) (ii) (B) of NDPS Act but the vehicle of the appellant allegedly used in commission of the offence has been ordered to be confiscated.
- 2) Case of the prosecution, in brief, is that 12.08.2016 when the vehicle bearing registration number MP 20 CC 4708 was intercepted and it was searched, 13 kg of cannabis was recovered, thereafter, after the investigation, charge-sheet was filed under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985. After the entire trial, the

appellant Vishnu Prasad Sahu was acquitted of the charges vide judgment dated 21.07.2017. The Court in the said judgment had further directed for confiscation of the vehicle whereby the alleged cannabis was transported.

- 3) Learned counsel for the appellant submits that the acquittal order having been passed in favour of the appellant and as per the prosecution, the vehicle was seized from the possession of the present appellant and since the conviction has not been effected, therefore, he is entitled to get back his vehicle as without any rhyme or reason the order for confiscation cannot be passed.
- 4) Learned State counsel opposes the prayer.
- 5) Perused the judgment dated 21.07.2017. Reading of the judgment would show that the trial Court acquitted the appellant on the ground that the prosecution was not able to prove the fact that sample packet sent for FSL examination was drawn from the contraband seized from the said vehicle. The judgment further ordered for confiscation of the vehicle as the vehicle was not claimed by the appellant despite his acquittal.
- 6) Section 60 in The Narcotic Drugs and Psychotropic Substances Act 1985 reads as under-

“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.

63. Procedure in making confiscations.— (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

- (2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the

evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance 5[controlled substance], the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

7) Section 452 of Cr.P.C. reads as under:-

“ 452. Order for disposal of property at conclusion of trial.

- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.
- (2) An order may be made under Sub Section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-Section (1) is modified or set aside on appeal or revision.
- (3) A Court of session may, instead of itself of making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Sections 457, 458 and 459.
- (4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.
- (5) In this Section, the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or

under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.”

- 8) In the present case, admittedly the vehicle in question was seized from the joint possession of the appellant and other co-accused persons and as per documents of Annexure P/2 it is registered in the name of the present appellant. The prosecution has utterly failed to establish that the sample sent for FSL examination was drawn from the contraband seized from the vehicle in question on the spot itself. The evidence aduced by the prosecution also run contrary to each other. Thus, the prosecution has not only failed to prove involvement of the appellant in the crime but also failed in proving that the contraband was being carried in the vehicle in question.
- 9) Consequently, order of confiscation passed by the Court below by its order dated 21.07.2017 is liable to be set aside. Appellant is entitled to get back possession of the vehicle provided if he proves his ownership in respect of the vehicle. The appellant, if so adviced, may file necessary application before the trial Court and in such case, trial Court after satisfaction of the proof that the appellant is the owner may proceed in the matter imposing necessary condition and possession of the vehicle may be handed over to the appellant.

Sd/-

(Gautam Chourdiya)
Judge

Nadim