

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRWP-285-2017

Date of decision : 06.10.2021

M/s Shri Ganesh Finance Co.

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Ajay Kumar Kansal, Advocate
for the petitioner.

Mr.Saurav Khurana, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a criminal writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the order dated 03.01.2017 passed by the learned Special Judge, Patiala, vide which car no.DL-8CL-4779 has been ordered to be confiscated to the State without any opportunity of hearing having been given to the petitioner.

Brief facts of the prosecution case are that Gurdeep Singh and Humesh Kumar were tried in FIR no.55 dated 11.09.2015, under Section 15 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and under Sections 473 and 489 of the IPC and were convicted by the Special Court, Patiala, vide judgment dated 03.01.2017 as follows:-

Name of Convict	Offence under Section	Punishment
Gurdeep Singh & Humesh Kumar	15 NDPS Act	To undergo rigorous imprisonment for 10 years and to pay a fine of Rs.One Lakh each. In default of payment of fine the defaulting convict is to undergo further rigorous imprisonment for a period of one year.
Gurdeep Singh & Humesh Kumar	473 of the IPC	To undergo rigorous imprisonment for 5 years and to pay a fine of Rs.five thousand each. In default of payment of fine the defaulting convict is to undergo further rigorous imprisonment for a period of five months.
Gurdeep Singh & Humesh Kumar	489 IPC	To undergo rigorous imprisonment for one year and to pay a fine of Rs.One thousand each. In default of payment of fine the defaulting convict is to undergo further rigorous imprisonment for a period of one month.

2. All the sentences shall run concurrently. The period of detention already undergone by the convicts during the enquiry, investigation and trial shall be set off under Section 428 Cr.P.C. from the sentence of imprisonment awarded to the convicts. Copy of judgment be supplied to the convicts free of costs. Case property be disposed of after the expiry of the period of appeal or revision, if any. File be arranged, indexed, compiled and consigned to the Record Room.”

Vide order of even date, i.e. 03.01.2017 (impugned order) the Special Court, Patiala, had confiscated the abovesaid car. A perusal of the abovesaid order would show that no notice was issued to the petitioner and only the convict Humesh Kumar, who was stated to be the owner, was heard.

Learned counsel for the petitioner has submitted that in fact in

between convict Humesh Kumar and the petitioner, which is a financier and a proprietorship firm. Reference has been made to the agreement dated 19.05.2015 (Annexure P-1) to show that the same was between the petitioner and the said Humesh Kumar and as per the said agreement, the petitioner was stated to be the owner whereas Humesh Kumar was stated to be hirer.

Further reference has been made to the registration certificate of the said car (Annexure P-2) to highlight the fact that on the right hand side of said registration certificate, there is an endorsement TO/HPA/ HPT, which as per learned counsel for the petitioner reflects that there is a hire purchase agreement with the financier in existence. Even the insurance cover by the United India Insurance with respect to the car (Annexure P-3) has been referred to by learned counsel for the petitioner, in which also, there is mention of the petitioner firm to be shown as a financier. The said insurance note is of the year 2015 in which year the FIR was registered. On the basis of said document, it has been submitted that the petitioner is a person interested within the meaning of proviso of Section 63(2) of NDPS Act, 1985.

Learned counsel for the petitioner has also relied upon the judgment of Division Bench of Bombay High Court in ***B J S Finance and Leasing Company vs. State of Maharashtra, decided on 24.02.1998*** reported as ***1998(4) RCR (Crl.) 581***. It has, thus, been prayed that the impugned order dated 03.01.2017 to the extent that the vehicle in question, has been confiscated without issuing notice to the petitioner deserves to be set aside and a fresh order be passed by the Special Court, Patiala, after hearing the petitioner.

Per contra learned counsel for the State has referred to his reply and has highlighted the fact that convict Humesh Kumar was the owner of the property and no such fact was brought to the notice of the Special Judge, Patiala, to state that the vehicle was financed or that there was any person interested and in fact, no such information had come up in the investigation. However, the documents referred to by learned counsel for the petitioner have not been specifically denied by the State.

This Court has heard learned counsel for the parties and have perused the record.

Proviso to Section 63 (2) of the NDPS Act, is reproduced hereinbelow:-

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“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.”

The Division Bench of Bombay High Court in ***B J S Finance and Leasing Company's*** case (supra) while considering the said provision has held as under:-

“2. The facts, in brief, giving rise to this Writ Petition are that the petitioner No. 1 is Finance and Leasing Company engaged in the business of financing and purchase of motor vehicles. Petitioner No. 1 advanced a sum of Rs. 2,50,000/- to the petitioner No. 2, on 15-4-1994, and further sum of Rs. 1,12,500/- to the petitioner No. 2 by way of hire-purchase agreement in favour of petitioner No. 2, for purchase of truck AP-16-V-7794. Thus, petitioner Nos.1 and 2 both are the owners and the

persons who claim right to the said truck.

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5. *The trial against the three accused proceeded and ended in conviction as per the judgment and order dated 19-6-1997 by the IIIrd Additional Sessions Judge, Ahmednagar. In the said order, the learned IIIrd Additional Sessions Judge passed the order regarding confiscation of the truck and further directed that the said truck be sold by public auction as per Narcotic Drugs and Psychotropic Substances Rules, 1985, and the sale proceeds be credited to the State of Maharashtra. Being aggrieved by the order of conviction and sentence, the three accused have filed Criminal Appeal Nos. 209/1997 and 219/1997, in this Court, and both the appeals are pending.*

6. *The petitioners have filed the writ petition on the following grounds :*

The order regarding confiscation of the truck is passed without issuing any notice to the petitioners. They were not heard before passing the order regarding confiscation. Thus, the procedure as prescribed under Section 63 of the N.D.P.S. Act is not at all followed by the learned IIIrd Additional Sessions Judge. Not only that, even the principles of natural justice are not followed by the learned IIIrd Additional Sessions Judge before passing the order of confiscation of truck. Thus, the learned IIIrd Additional Sessions Judge has not exercised the jurisdiction vested in him properly and legally while passing the order of confiscation. It is further contended that the order is bad in law, perverse and, therefore, deserves to be set aside. The petitioners have contended that they have left with no other

alternatives with speedy and efficacious remedy and, therefore, they have filed the present petition.

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17. It is, therefore, very clear that a complete procedure is prescribed under Sections 60, 61, 62 and 63 of the N.D.P.S. Act for confiscation of the contraband, articles used for the purposes of dealing in contraband and the conveyance. From this point of view, sub-section (1) of Section 63 makes it clear that :

"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."

This means that irrespective of the decision in the trial, the Court has power to pass an order regarding confiscation. So, whether the owner of the conveyance is tried along with other accused or not will not create any restraint on the authority of the Court to pass an order regarding confiscation of the conveyance.

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19. However, this interpretation is not flowing from the provisions of Section 63 of the N.D.P.S. Act. Sub-section (2) of Section 63 reads as follows :

"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."

On reading this sub-section, it will be clear that if the person who committed the offence is not known or cannot be found, the Court may inquire into and decide such liability and the Court may order confiscation after holding enquiry and the proviso makes it clear that if there is any person who can claim any right to the thing or article seized, then he must be given hearing by the Court. This provision makes it clear that person who has committed the offence is not being tried because he is not known or he is not being found, at the same time, person who not being tried who claims any right to the property is to be heard before passing any order regarding confiscation."

20. *The clear meaning of sub-section (2) of Section 63 is that any person who is tried or not tried for offence punishable under the N.D.P.S. Act, but who claims any right to the article or things seized, must be given an opportunity to make out his case before passing the order regarding confiscation.*

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29. *Considering all these circumstances, the order of confiscation of the truck, passed by the learned IIIrd Additional Sessions Judge, has to be set aside and the matter has to be remanded back to the trial Court with a*

direction to give sufficient opportunity to the petitioners to make out their case as per the provisions of sub-section (3) of Section 60 and Section 63 of the N.D.P.S. Act, and then to pass appropriate orders.

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32. *Hence, Criminal Writ Petition is allowed. The order passed by the learned IIIrd Additional Sessions Judge, Ahmednagar, in Sessions Case No. 324/1995, on 19-6-1997, only with respect to confiscation of the truck No. AP-16/V-7794, set aside. The learned IIIrd Additional Sessions Judge, Ahmednagar, is directed to give proper opportunity of hearing to the petitioners in the matter of confiscation of the truck and then to pass appropriate order regarding confiscation of the truck as per law. The learned IIIrd Additional Sessions Judge, Ahmednagar, to pass orders within a period of 60 days from the date of receipt of this writ.*

33. *Rule absolute accordingly.*

Petition allowed.”

A perusal of the abovesaid judgment would show that the aforesaid matter also pertains to a case of hire purchase agreement in which petitioner no.1 was the financier. Even in the aforesaid case, the confiscation order had been passed and petitioner no.1 was not heard. After considering the provisions under Sections 60, 61, 62, and 63 of the NDPS Act, it was held that a person who claims right to the articles seized, must be given an opportunity to make out his case before the order of confiscation is passed and accordingly, the criminal writ petition was allowed and order confiscating the truck in question, in the said case, was set aside and the Court was directed to pass a fresh order after giving a proper opportunity of hearing to the petitioner with respect to the said confiscation. The objection

after a detailed discussion.

In the present case, it is not in dispute that the petitioner has not been given an opportunity of hearing before passing of the confiscation order. Even the documents referred to by learned counsel for the petitioner, i.e. the Hire Purchase Agreement dated 19.05.2015, registration certificate (RC) carrying the endorsement of the hire purchase agreement as well as the insurance note having the name of the petitioner as insurer, have not been specifically rebutted by the State and also *prima-facie* proves that the petitioner is a person interested, who would have a claim / right in the vehicle which has been confiscated.

Thus, keeping in view the abovesaid facts and circumstances and also proviso to Section 63(2) of the NDPS Act and also law laid down by the Division Bench of Bombay High Court in ***B J S Finance and Leasing Company's*** case (supra), the present petition is allowed and the impugned order dated 03.01.2017 passed by the Special Judge, Patiala, is set aside to the extent that the vehicle in question, i.e. car no.DL-8CL-4779 has been ordered to be confiscated by the State, with a further direction to the Special Court, Patiala, to pass a fresh order after hearing the petitioner and after considering the case of the petitioner to the aforesaid extent. The petitioner is directed to appear before the concerned Court on 14.10.2021 and the concerned Court is directed to give an opportunity of hearing to the petitioner and pass a fresh order, in accordance with law.

A co-ordinate Bench of this Court while issuing notice of motion on 14.03.2017 had observed that case property shall remain preserved. The said interim order would continue for the period of 15 days from today, after which it will be open to the petitioner to make a prayer

with respect to any interim relief before the Special Court, Patiala.

(VIKAS BAHL)
JUDGE

October 06, 2021
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No