

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.596 of 2022

Arising Out of PS. Case No.-84 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- East Champaran

-
1. Jitendra Kumar Son of Surendra Prasad Chaudhary Proprietor of M/s. Harsh International , Resident of Mohalla- Pan Mandi, Bank Road, Post and P.S- Raxaul, Dist- East Champaran
 2. Hari Narayan Mahato Son of Late Sitaram Prasad Mehta Propreitor of M/s. Goods Supplier Traders, Resident of MOhalla- Tummariya Tola, Post and PS- Raxaul, Dist- East Champaran
 3. Pradeep Kumar Son of Mahendra Prasad Proprietor of M/s. Shivam Trading, Resident of Naga Road, Post and PS- Raxaul, Dist- East champaran

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Custom, New Delhi
2. The Deputy Commissioner, Land Custom Station, Raxaul, Dist- East Champaran Bihar
3. The Superintendent of Land Custom Station, Raxaul, Dist- East Champaran Bihar
4. The Inspector of SSB , ICP, Raxaul, Dist- East Champaran Bihar
5. The Inspector of Custom, ICP, Raxaul, Dist- East Champaran Bihar
6. The A.S.I, S.S.B., ICP, Raxaul, Dist- East Champaran Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rakesh Kumar No.1, Advocate
For the Respondent/s : Mr.Anshuman Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 20-10-2022 Heard learned counsel for the petitioners and Mr. Anshuman Singh, learned counsel for the Department of Customs.

Petitioners in this case are seeking setting aside of the order dated 22.07.2022 passed by learned 1st Additional Sessions Judge-cum-Special Judge, East Champaran at Motihari in NDPS Case No.84 of 2021 whereby and



whereunder the learned court rejected the petition seeking release of the seized clothes (mentioned at serial nos.3, 12 and 19 of Annexure-A to the complaint of Custom).

Learned counsel submits that as per the prosecution case a truck was intercepted on secret information that it was transporting illegally export manufactured psychotropic substances/drugs concealing the same in a secret chamber of the truck. Acting on the said information the truck was located parked in the examination yard of ICP. The officers of SSB at ICP, Raxaul in presence of two independent witnesses approached the truck but the driver or the cleaner of the truck was not found there. It is alleged that on search conducted, in a secret chamber behind the driver seat six duffle bags were recovered. The bags were taken out and examined in presence of the independent witnesses and found to be containing drugs of different chemical composition appearing to be manufactured psychotropic substances.

It is alleged that the manner in which the drugs were secreted in the secret chamber of the truck it gave reasons to believe that those articles were being exported illegally out of India to Nepal. The miscellaneous goods covered under different shipping bills which were loaded on the said truck



were being used to conceal the recovered medicines and, therefore, the custom authorities are of the view that they are also liable to be confiscated for contravention of the provisions of the NDPS Act, 1985 read with the Customs Act, 1962.

Learned counsel for the petitioners submits that in this case cognizance has been taken on 02.03.2022 against the named accused persons namely Raju Prasad and Aandip Tamang for the offence under Sections 21(C), 23(C) and 25 of the NDPS Act. The petitioners are not named in the FIR/Complaint. It is submitted that the petitioners are owner of the seized clothes mentioned at serial nos.3, 12 and 19 of the seizure list and except that there is no allegation against the petitioners. The petitioners being the proprietors of 'M/s Harsha International, M/s Goods Supplier Traders and M/s Shivam Trading' respectively are the bonafide owner of the said clothes and they were consignee of the said clothes as per the documents which are available. It is pointed out that the injection vials and tables as per seizure list has been recovered from a secret chamber behind the driver seat. Therefore, the allegation that those were concealed under the clothes in question is apparently false.



It is lastly submitted that under the provisions of the NDPS Act the trial court is competent to pass an order for confiscation of any other article or vehicle etc. only after final conclusion of the trial, in this case the same court has ordered for release of the clothes of one Sanoj Kumar (proprietor of M.K. Vastralay, Raxaul) vide order dated 07.03.2022 (Annexure-5) but rejected the application of the petitioners which shows the inconsistency in the order passed by the learned 1st Additional District & Sessions Judge-cum-Special Judge, East Champaran, Motihari.

When this matter was taken up on 29.09.2022, this Court after hearing learned counsel for the petitioners, on the request of Mr. Anshuman Singh, learned counsel for the Department of Customs granted time to the Department to file a counter affidavit and directed to list this matter on 18th October, 2022. This Court cautioned the Department that if the 'Sarees' get damaged in the custody of the Department, the Department will have to take the responsibility and liability thereof.

Today, Mr. Anshuman Singh, learned counsel submits that he could not file a reply/counter affidavit because he was himself not satisfied with the instructions which were



receiving from the Department. He prays for further time which this Court refused to grant. Learned counsel has pointed out that Section 61 of the NDPS Act would make the clothes/Sarees also liable for confiscation. It is, however, not disputed that in the same case the learned court below has ordered for release of some of the clothes of M.K. Vastralay, Raxaul and the said order has not been challenged by the Department.

Considering the facts and circumstances of the case, the nature of the clothes which are likely to get damaged and would lose its value over the period and further that the trial of the NDPS case is not likely to be concluded in near future and in similar situation in respect of one of the traders the same court has directed release of the clothes, this Court directs release of the Sarees/clothes as per serial nos.3, 12 and 19 of the seizure list in favour of the petitioners subject to the verification of documents of the consignment in question in their name and on furnishing surety bond (not in form of cash or bank guarantee) to the extent of the value of the Sarees/clothes with an undertaking that they will abide by the order of the learned trial court, if any, passed in the confiscation case upon conclusion of the trial.



Let the entire exercise of verification be completed within 15 days from the date of communication of this order.

Before this Court parts with this order, it must be brought to the notice of the learned Presiding Officer of the court that apparently his order as contained in Annexure-5 and the order impugned in the present case seem to be inconsistent. This is to be looked into in future.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

arvind/-

U		T	
---	--	---	--

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

