

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV NO. 69 OF 2019

State of Orissa

...

Petitioner

Mr.Karunakar Gaya
,Advocate

-versus-

Prasanta Kanhar

Opposite Party

CORAM:

JUSTICE S.K. PANIGRAHI

ORDER

08.02.2022

Order
No.

10

1. This matter is taken up by hybrid mode.

2. The petitioner-State has filed this criminal revision with a prayer to set aside the impugned order dated 17.10.2017, passed by learned Sessions Judge, Phulbani, in Criminal Miscellaneous Case No.22 of 2017.

3. The brief facts of the case is that, while the Deputy Supdt of Police Special Task Force, Bhubaneswar was on patrolling duty in the district of Kandhamal, he received credible information of the storage of huge quantity of contraband ganja in the residential house of Timpa Kanhar, in Nedipada, Motingia. Pursuant to the said information he observed all formalities and raided the house in the presence of two witnesses. 442.830 kilograms distributed over 24 Gunny bags was recovered from the house. It was also found that both the accused had been cultivating ganja for the last 5 to 6 years, for financial gain. The police personnel seized the contraband articles, cash to the tune of Rs.35,000/-, one SBML gun, passbooks of UCO Bank and SBI, LIC bonds, Land Patta

and one Passion Pro motor cycle bearing registration No. OD-12-6694. Further, they arrested the accused persons.

4. Learned counsel for the State submits that the learned trial court has committed gross error in allowing the petition under Section 457 Cr.P.C., since an efficacious and competent authority to maintain the petition is in existence as enumerated under Section 68Q of the NDPS Act. There is a specific bar on the jurisdiction of Courts to entertain any matter which falls within the powers of the Competent Authority.

5. It is well settled in law that, the powers to release the seized property is not available under the NDPS Act and if at all, the same is to be done, then it has to be done by the competent authority after adopting due procedure as prescribed in Chapter(v)-A of the NDPS Act. Thus the impugned order suffers from lack of jurisdiction and competency. The competent authority vide order dated 17.11.2016 has confirmed that the seized property is liable to forfeiture in accordance with law enshrined U/s 68(H) and 68(1) of the NDPS Act. As the order of confirmation made by the competent authority is appealable to the statutory appellate tribunal, the learned Special Judge should have refused to exercise the jurisdiction and power under Section 457 Cr.P.C. to release the motor cycle.

6. On perusal of the entire record and the order of the court below, it is found that the learned court below has rightly passed the order by allowing the petition for release of vehicle as the same

was languishing in the open. Further, there are no sufficient materials on record indicating the vehicle's involvement in the crime. The vehicle being a sophisticated electronic and mechanical device would lose its utility if left uncared for.

7. In view of the above, this Court find no any infirmities in the order of the court below. The Criminal Revision is accordingly dismissed.

8. Issue urgent certified copy as per Rules.

(S.K.Panigrahi)
Judge



LB