

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.607 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- East Champaran

MAMTA TRADERS @ MAMTA TRADERS, THROUGH ITS PROPRIETOR HEM PRASAD NEUPANE @ HEM PD. NOPANI MAMTA TRADERS @ MAMATA TRADERS, BHARATPUR3 NARAYANGARH, CHITWAN, NEPAL THROUGH ITS PROPRIETOR HEM PRASAD NEUPANE @ HEM PD NOPANI, SON OF IM PRASAD NEUPANE, RESIDENT OF BHARATPUR, NARAYANGARH, CHITWAN, NEPAL

... .. Petitioner/s

Versus

1. THE UNION OF INDIA THROUGH DIRECTOR GENRAL NARCOTIC CONTROL BUREAU, MINISTRY OF HOME AFFAIRS, Government of India, New Delhi
2. THE DEPUTY COMMISSIONER OF CUSTOMS LAND CUSTOMS STATION, DEPARTMENT OF CUSTOMS AND EXCISE GOVERNMENT OF INDIA, RAXAUL, DISTRICT- EAST CHAMPARAN
3. THE INSPECTOR (PREVENTION) CUM- SEIZURE OFFICER, LAND CUSTOMS STATION, DEPT. OF CUSTOMS AND EXCISE GOVERNMENT OF INDIA RAXAUL, DISTRICT- EAST CHAMPARAN

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Mishra
For the Respondent/s : Mr. Anshuman Singh, Sr. S.C.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 07-08-2023 The present writ application has been filed against the order, dated 20.02.2023, passed, by the learned 1st Additional Sessions Judge -cum- Special Judge, East Champaran, at Motihari, in N.D.P.S. Case No. 52 of 2021, arising out of Unit Case No. 01 of 2021, dated 06.06.2021, registered for the offences punishable under Sections 8/21 (a) of the Narcotic Drugs and Psychotropic Substances Act, 1985, read with Section 7/11/50/51 of the Customs Act, 1962 whereby the



learned District Court has rejected the prayer of the petitioner for releasing the rice mill set (6N40), covered under Customs Transit Declaration No. 1017929 in favour of the petitioner pending trial or confiscation proceeding.

2. The brief facts, giving rise to the present writ application, is that the Inspector (Prevention), Land Customs Station, Raxaul received information regarding movement of manufactured psychotropic drugs by a trailer, bearing Registration No. NL01AB3612. The trailer was loaded with Customs Transit Declaration consignment from India to Nepal through Laxmipur, I.C.P. Raxaul road. Accordingly, the preventive team found the trailer, in question, by the side of the road, at the Indo-Nepal border, having a 40 feet sealed container. Since no one was present on the trailer, the trailer was thus brought inside I.C.P. by taking the help of a driver of another vehicle and search was conducted in presence of the witnesses and two cartons were found containing 240 bottles of ONEXREX Cough Syrup of 100 Ml. each from the cabinet of the said trailer. On opening the cavity of the trailer, 930 more bottles of the same cough syrup was found hidden in the cavity underneath the chassis and seizure list was accordingly prepared.



3. Learned Counsel for the petitioner submits that the petitioner has purchased the rice mill set, in question, from China, for importing it to Nepal and the said consignment reached Kolkata Port in sealed container and the Road Star Logistics Private Limited was engaged for transporting the said container from Kolkata to Nepal, who, in turn, hired the vehicle, in question for the said purpose. He further submits that the rice mill set was in sealed condition, having seal no. 00LGQ86490 of the Department of Customs and Excise. He further submits that the petitioner or the sealed consignment of rice mill set is in no way connected with the recovery of the cough syrups inasmuch as the same was not recovered from inside the container, having rice mill set; rather the same was recovered from the cabin and the cavity underneath the chassis of the vehicle. Admittedly, the seal of customs authorities is intact on the container, in question. Therefore, it cannot be said that there could be, or there has been recovery of any narcotic substance from the container, in question. He further submits that the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 has no application in the particular fact of this case so far as it relates to the release of the rice mill set, in question. In support of the ownership of the rice mill set, the petitioner has



annexed documents, at Annexures 2, 3 and 4 to this writ application. He further submits that the confiscation proceeding has not been initiated as yet and in view of Section 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the confiscation proceeding may not be initiated till the conclusion of the trial. He further submits that the rice mill set is a machine and is kept in an open space at the I.C.P., Raxaul and is subject to deterioration by the passage of time.

4. It has further been argued by the petitioner that the transporter, M/s Road Star Logistics Pvt. Ltd., filed a writ application before this Court, bearing in Cr. WJC No. 904 of 2021 for quashing of the seizure memo no. 01 of 2021, dated 06.06.2021, whereby the container, in question, (duly sealed by the respondent-custom department) has also been seized and for consequential release of the container (1' x 40') No. OOCU6959842, containing CTD goods rice mill machine set, duly sealed. vide seal bearing no. OOLGQ86490 and WINT00017202. In the said writ application learned Additional Solicitor General had submitted that if the owner of the purchased machine which was being transported in the container duly sealed by the customs department would have come forward and claimed the same at the appropriate forum, then



only the authorities could consider such claim having regard to bona fide of the claimant and after observing the legal requirement and formalities. It is not disputed that the petitioner is the owner of the purchased machine (rice mill set) having seal of customs authorities and it is also not disputed that the seal of the customs authorities is intact on the container in question.

5. Learned Counsel, assailing the order of 1st Additional Sessions Judge -cum- Special Judge, East Champaran, at Motihari, submits that the learned 1st Additional Sessions Judge -cum- Special Judge, East Champaran, at Motihari, has failed to appreciate the legal provisions enshrined under Section 451 and 457 of the Code of Criminal Procedure, 1973, and the law laid down by the Supreme Court, in the case of **Sunderbhai Ambalal Desai v. State of Gujarat**, reported in **(2002)10 SCC 283**, as well as the judgment of co-ordinate Bench of this Court, in the case of **Jai Kishan Kumar v. Union of India**, reported in **2021 (1) BLJ 374**.

6. On the other hand, learned Counsel for the respondent-Union of India opposed the prayer of the petitioner for release of the rice mill set in favour of the petitioner during pendency of the trial and/or confiscation proceeding and submits that the cough syrups were recovered along with the



container of the rice mill set and the said container is liable to be confiscated. He further submits that since the petitioner is a foreign national (resident of Nepal), and if the rice mill set is release in his favour, the trial of the case will be prejudiced due to his non-co-operation. He further submits that if the petitioner will co-operate during the trial of the case and will give an undertaking that he will be bound by the laws of the Land and in future, he will not take a plea that he is a foreign nation, the consignment of rice mill set may be released in his favour.

7. I have heard learned counsel for the parties concerned and have also gone through the provisions prescribed in Code of Criminal Procedure, 1973, as well as Sections 60, 61 and 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

8. From perusal of Sections 60, 61 and 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, it appears that any conveyance used in carrying Narcotic Drugs and 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.



9. In view of the aforesaid, now the question of release of the rice mill set of the petitioner would be under the provisions of Sections 451 and 457 of the Code of Criminal Procedure, 1973, 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. From perusal of the aforesaid provisions, it would appear that the Court is empowered to pass an appropriate order with regard to such property. The object and scheme of the various provisions of the Code of Criminal Procedure, 1973, dealing with seizure of property by the police has been dealt with by the Supreme Court, in the case of **Sunderbhai Ambalal Desari v. State of Gujarat reported in (2002) 10 SCC 283** in paragraphs- 5 and 7, wherein it has been observed as follows:-

“5. Section 451 clearly empowers 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 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of it 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."

11. In paragraphs 17 and 21 of **Sunderbhai Ambalal Desari** (supra), the Supreme 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."

12. The Supreme Court, in another judgment reported in the case of **Smt. Basavva Kom Dyamangouda Patil v. State of Mysore and Another**, 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 Code of Criminal Procedure, 1973, has observed, in paragraph 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."

13. In view of the aforesaid discussion of law as well as the facts involved in the matter, I am of the considered opinion that the learned 1st Additional Sessions Judge -cum- Special Judge, East Champaran, at Motihari, has failed to exercise his jurisdiction in correct legal perspective and thereby committed material irregularity inasmuch as if the container having rice mill set is allowed to be kept in open at the I.C.P., Raxaul, it may lose its worthiness due to natural decay. It is not disputed that the petitioner is the owner of the container having rice mill set and the same is lying at I.C.P., Raxaul, since 2021.

14. Accordingly, the order, dated 20.02.2023, passed, by the learned 1st Additional Sessions Judge -cum- Special Judge, East Champaran, at Motihari, in N.D.P.S. Case No. 52 of 2021, arising out of Unit Case No. 01 of



2021, is set aside and the learned 1st Additional Sessions Judge -cum- Special Judge, East Champaran, at Motihari, is directed to release the container, having rice mill set, in question, in favour of the petitioner after verifying the ownership of the same within a period of three weeks from the date of receipt/production of a copy of this order, subject to the following conditions:-

(i) That the petitioner shall furnish adequate bank guarantee of Rs. 3,00,000/- to the satisfaction of the learned District Court.

(ii) That before handing over the container, containing rice mill set to the petitioner, a detailed and proper *panchnama* of the said rice mill set, after taking its photograph, shall be prepared.

(iii) That the petitioner will execute a bond that he will co-operate in the trial of the case and will also give an undertaking that he will be bound by the laws of the Land and in future, he will not take a plea that he is a foreign national.

(iv) That the petitioner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the rice mill set till pendency of the trial.

15. In the result, this writ application is allowed with



the aforesaid observations and directions.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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