

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 838 of 2019

Salil Kumar Chatterjee

Vs

State of West Bengal.

For the Petitioner : Mr. Satadru Lahiri.

For the State : Mr. Sanjay Bardhan,
Ms. Debjani Dasgupta.

Heard on : 15.06.2023

Judgment on : 06.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 07th May, 2018 passed by the Learned Judge Special Court under NDPS Act-cum-Additional Sessions Judge, 5th Court, Berhampore, Murshidabad in connection with NDPS Case No. 412/17 arising out of Suti Police Station case No. 657/17 dated 22.11.2017 under Sections 20(b)/21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, thereby rejecting the Petitioner's prayer for interim custody of the vehicle seized in connection with the instant case.
2. The petitioner is a businessman by profession and also the registered owner of a Heavy Goods Vehicle made of Tata Motors, bearing Registration No. WB 57B 2757, since April, 2012. The said vehicle has National Permit as a Public Career, duly issued by the concerned authority of Regional Transport Authority, Murshidabad.
3. On or about 21st November, 2017, at about 21.05 hrs., the police personnel attached to Suti Police Station apprehended the said vehicle on NH 34 near Maa Manosa Hotel, Ajagar Para More, under Suti Police Station on the allegation that contrabands are being carried in the said vehicle. The police personnel of the said Police Station also apprehended two persons including the driver of the said vehicle. It is also alleged that upon search 34Kgs 500gms of Ganja was recovered from the cabin of the

said vehicle for which the arrested accused persons could not give any plausible explanation.

4. Pursuant to alleged search and seizure and on the basis of Letter of Complainant lodged by the Subhrojyoti Chatterjee, Sub-Inspector of Police attached to Suti Police Station, the instant case being Suti Police Station Case No. 657 of 2017 dated 22.11.2017 was registered for investigation against two accused persons namely Arjun Sutradhar and Kalam Ali, for commission of the alleged offences punishable under Sections 20(b)/27(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner is not an accused in this case.
5. After completion of investigation in connection with the instant case, the investigating agency submitted Charge Sheet vide Charge Sheet No. 102/18 dated 30.03.2018 before the Learned Judge Special Court under NDPS Act-cum-Additional Sessions Judges, 5th Court, Berhampore, Murshidabad (hereinafter referred to as 'the Learned Judge') against the aforesaid two accused persons for commission of the alleged offences punishable under Sections 20(b)/21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The Owner/Petitioner states that true and proper appreciation of the Charge Sheet as submitted in connection with the instant case would clearly indicate that in course of investigation nothing incriminating could be found against the owner/petitioner and as such he has not been arraigned as accused in connection with the instant case.

6. That since apprehension, the vehicle is lying at Suti Police Station in open space without any due protection and/or maintenance, which is making it vulnerable to natural decay. As the vehicle is lying idle at Suti Police Station since long, it has already suffered huge damage and if the same is not subjected to immediate repairs, it will succumb to its natural decay and become scrap.
7. At that juncture, because of unavoidable impediments/inconveniences, he through his attorney holder preferred an application thereby praying for interim custody of the said vehicle before the Learned Judge. The Learned Judge upon hearing the Learned Advocates appearing for the owner/petitioner vide an order dated 07th May, 2018 was pleased to turn down such prayer, with an observation that as the vehicle has been seized by the investigating officer of the instant case over an allegation of carrying ganja without valid license, as per Notification of Central Government vide No. GSR 339E dated 10.05.2017, the question of return/disposal of the said vehicle has to be decided by the Disposal Committee and the Learned Judge has no jurisdiction or authority to deal with the issue.
8. **Mr. Satadru Lahiri, learned counsel for the petitioner** has submitted that the Learned Judge while passing the impugned order failed to appreciate that the discretion available to him under Section 451 of Code of Criminal Procedure, 1973 is a judicial one and the same has to be

exercised in a judicious manner and not in an arbitrary manner as has been done in the instant case.

9. That considering all material on record as well as settled principles of law, the Learned Judge should have allowed owner/petitioner's prayer for interim custody of the vehicle.
10. For that the impugned order as passed by the Learned Judge is otherwise bad in law and the same as such is liable to be set aside.
11. **Mr. Sanjay Bardhan, learned counsel for the State** is present.
12. The **order dated 07.05.2018 in NDPS Case no. 412 of 2017** under revision is as follows:-

"NDPS Case No. -412/1017"

Order No.23
07.05.2018

Accused Kalam Ali and Arjun Sutradhar in JC are produced from JC and remanded to JC till date.

One bail petition on behalf of both accused are filed and the same is moved by their Ld. Lawyer.

Ld. PP in-charge strongly raises objection.

Considering the recovery of commercial quantity of ganja, bail petition stands rejected.

One application is made further claiming minor of Kalam Ali supported with Xerox copy of School Certificate and NCR and further prays that ossification test be made. This prayer to be considered and next date is fixed on 19.06.2018 for enquiry.

*Another petition is filed on behalf of the registered owner Shalil Kr Chatterjee of seized vehicle through one Samir Kr Das with a prayer that seized vehicle bearing registration no. WB-57B/2757 be returned on interim custody to the registered owner. Since this vehicle has been seized by the IO with an allegation that this vehicle was carrying alleged ganja without valid licence. So, by virtue of **Notification of Central Government vide no. GSR 339E,***

dated 10.05.2017, disposal of the articles including conveyance which are liable to be confiscated be disposed by Disposal Committee. There is no jurisdiction of this Court to dispose of the same by virtue of that notification. Accordingly, prayer stands rejected.

Dictated by me,

Sd/-
Judge, Spl. Court, under NDPS Act.
-cum-ADJ, 5th Court, Berhampore, Msd."

13. Section 451 of the Code of Criminal Procedure, lays down:-

"451. Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, " property" includes-

- (a) property of any kind or document which is produced before the Court or which is in its custody,
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

14. Section 452 of the Code of Criminal Procedure, lays down:-

"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 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."

15. The Supreme Court in ***Sunderbhai Ambalal Desai vs State of Gujarat, (2003 SCC (Cri) 1943)***, on October 1, 2002, held:-

“8. The question of proper custody of the seized article is raised in a number of matters. In Basavva Kom Dyamangouda Patil v. State of Mysore [(1977) 4 SCC 358 : 1977 SCC (Cri) 598] this Court dealt with a case

where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: (SCC p. 361, para 4)

“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.”

(emphasis supplied)

9. The Court further observed that where the property is stolen, lost or destroyed and there is no *prima facie* defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over

possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

16. **Thus in view of the guidelines of the Supreme Court**, the findings of the Magistrate is not in accordance with law and thus an abuse of the process of law/court.
17. Accordingly the order under revision dated 07th May, 2018 passed by the Learned Judge, Special Court under NDPS Act-cum-Additional Sessions Judge, 5th Court, Berhampore, Murshidabad in connection with NDPS Case No. 412/17 arising out of Suti Police Station case No. 657/17 dated 22.11.2017, **is set aside being not in accordance with law.**
18. The learned Trial Court will return the vehicle as per the provision of Section 452 of Cr.P.C. by passing appropriate orders keeping with the guidelines of the Supreme Court in ***Sunderbhai Ambalal Desai vs State of Gujarat (Supra)*** within one month from the date of this order.
19. **CRR 838 of 2019 is allowed.**
20. There will be no order as to costs.
21. All connected Applications stand disposed of.
22. Interim order if any stands vacated.
23. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

24. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)