

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1653 of 2019

Deben Mondal

Vs

The State of West Bengal.

For the Petitioner : Mr. Swapan Kr. Mallick,
Mr.Md. Kazi Mokhlasur Rahaman.

For the State : Mr. Swapan Banerjee,
Mr. Suman De.

Hearing Concluded on : 22.11.2023

Judgment on : 29.11.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for return of Vehicle being No. WB-65B/0657 seized in connection with Gazole P.S. Case No. 456/2018 dated 19.08.2018 under Section 15(c) and 22 of the N.D.P.S. Act.
2. The petitioner's case is that he is the Owner of Maxima Mini Van bearing Regn. No. WB-65B/0657 and the Vehicle is the only source of income of the petitioner's family consisting of five members. The petitioner used to give this vehicle on hire and earn money. Generally this hiring business is looked after by the petitioner's son Bharat Mondal.
3. The said Bharat Mndal is an accused in Gazole P. S. Case No. 456/2018 under Section 15(c) and 22 of the N.D.P.S. Act, as he had allegedly been apprehended by the police, for carrying 4 Kg 300 gms. poppy straw in the said vehicle bearing No. WB-65B/0657 and the Vehicle was seized by the police.
4. The police submitted charge-sheet being C.S. No. 546 of 2018 dated 30.11.2018 under Section 15(c) and 22 of NDPS Act on 30.05.2019.
5. That Deben Mondal, the petitioner herein and the owner of the vehicle, filed an application for return of the seized vehicle on 17.04.2019.
6. The Ld. Judge, 2nd Special Court, Malda in Special Case No. 36/2018, after hearing both the parties was pleased to reject the prayer for return to the vehicle, **vide an order dated 13.06.2019 which is as follows:-**

Special Case No. 36/2018

Order No. 10
13.06.2019

.....Under Section 60(3) of NDPS Act, 1985 as amended provides that any animal or conveyance/vehicle used in carrying any narcotic drugs or psychotropic substances shall be liable to confiscation, unless the owner of the said vehicle proves that the vehicle was used without knowledge or consent of the owner himself and that he had taken all reasonable precautions against such use and the occasion to examine this will arise only where the Court proposes to confiscate the vehicle.

In this case it appears that the accused son was driving the vehicle and therefore, it cannot be said that the owner/petitioner did not have knowledge or consent of use of the vehicle by his son. Prima facie I do not find anything from which it can be said that there is chance of return of the vehicle during disposal of this case. Therefore, I am not inclined to consider giving of interim custody of the vehicle to the petitioner as the case referred by the Ld. Advocate is factually different from this case.

In view of the above, the petition for returning of the seized vehicle is hereby rejected.....”

Sd/-
Judge, Special Court,
ADJ 2nd Court, Malda

7. 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."*

8. 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."

9. 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.”

10. 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, which is liable to be set aside in the interest of justice.

11. CRR 1653 of 2019 is thus allowed.

12. Accordingly the order under revision dated 13.06.2019 passed in Special Case No. 36 of 2018 arising out of Gazole Police Station Case No. 456 dated 19.08.2018 by the learned Judge, 2nd Special Court, Malda **is set aside being not in accordance with law.**

13. The 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.
14. There will be no order as to costs.
15. All connected Applications, if any, stand disposed of.
16. Interim order, if any, stands vacated.
17. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
18. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)