

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 786 of 2009

**Sankar Dutta
-Vs-
The State of West Bengal**

For the Appellant : Mr. Prabir Majumdar
(Amicus Curiae) Ms. Debamita Mukherjee

For the State : Mr. Narayan Prasad Agarwal
Mr. Pratick Bose

Heard on : 11.04.2023, 09.08.2023.

Judgment on : 05.12.2023.

Ananya Bandyopadhyay, J.:-

1. The instant criminal appeal is directed in connection with a petition dated 14.07.2008 pending before the Learned Additional District Judge-I, Krishnanagar, Nadia for release of vehicle in connection with Kaliganj Police Station Case No. 56 of 2008 and N.D.P.S. Case No. 63 of 2008.
2. The appellant on 13.08.2008 purchased a vehicle from Tapas Mondal. Pursuant to the purchase of the vehicle being WMC-258, the police authority seized the same on 16.03.2008 and Kaliganj Police Station Case No. 56 of 2008 was registered read with N.D.P.S. Case No. 63 of 2008. Pursuant to the service of the vehicle as mentioned above the petitioner made an application for release of the same.

3. The appellant stated that on 28.08.2009 the Learned Judge, Special Court (N.D.P.S. Act), Nadia passed a judgment acquitting all the accused persons in the said case.
4. The appellant stated that although judgment acquitting all accused persons in N.D.P.S. Case No. 63 of 2008 had been delivered yet the application of the appellant for release of the vehicle had not been disposed.
5. Learned Amicus Curiae for the appellant submitted that:-
 - i. The pendency of the application before the Learned Court below has caused hardship to the appellant.
 - ii. The Learned Judge erred in not disposing the application of the appellant expeditiously.
 - iii. The Learned Judge ought to have disposed the application of the appellant expeditiously.
 - iv. The appellant is unable to earn his livelihood due to non-release of his vehicle.
 - v. Unless an order is passed in terms prayed for the appellant will suffer irreparable loss and injury.
6. Heard the submission of the Learned Advocate for the State.
7. The appellant had filed a petition dated 14.7.2008 pending before the Learned Additional District Judge-I Krishnanagar, Nadia for the release of vehicle associated with Kaliganj P.S. Case No. 56/08 and N.D.P.S. case no. 63/08.
8. The Learned Amicus Curiae for the appellant submitted that on 28.8.2009, the Learned Judge, Special Court (N.D.P.S. Act) as aforesaid had acquitted all the accused persons. The present petitioner had been a registered owner

of a truck. The said truck was seized by the police in connection with the case as aforesaid relating to the offence punishable under the N.D.P.S. Act. However, the said vehicle was not released in favour of the petitioner.

9. Section 451 of the Code of Criminal Procedure states as follows:-

“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.”

10. Section 452 of the Code of Criminal Procedure states as follows:-

“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 securities, 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."

11. In **Union of India v. Tejinder Singh**¹, the Hon'ble Gauhati High Court observed that:-

"20. In cases of Raghbir Singh alias Beera v. State of Punjab, (2006) 4 RCR (Cri) 343; Rajesh Kumar v. State of Haryana, (2007) 2 RCR (Cri) 561 and Iqbal Singh v. State of Punjab, (2013) 2 RCR (Cri) 612, the vehicles seized under the NDPS Act case were ordered to be released. However contrary view was taken by the court in case of Kirandeep v. State of Punjab in connection with CRR No. 3231 of 2014 that in view of liability to confiscation, the vehicle seized under the NDPS Act case could not be released. In view of the conflict, reference was made to Division Bench in CRR No. 1765 of 2015 titled as Gurbinder Singh @ Shinder v. State of Punjab and it was held that the vehicle used for transporting the narcotic drugs and psychotropic substances can also be released on invoking the provision under Section 451 of the Cr. P.C.

21. Now, the question that arises for determination of Section 451 Cr. P.C. can be applied while considering the plea for interim custody of the vehicle seized under the NDPS Act. Section 51 of the NDPS Act which has a bearing on this issue reads as follows:—

¹ 2023 SCC OnLine Gau 729

“51. Provisions of the Criminal Procedure Code, 1973 to apply to warrants, arrests, searches and Seizures.- The provisions of the Criminal Procedure Code, 1973 (2 of 1974) shall apply, in so far they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.”

22. As regards the seizure of any article or thing, the provisions of Cr. P.C. shall apply if it is not inconsistent with the provisions of NDPS Act.

23. On a thorough perusal of the various provisions under the NDPS Act, it appears that there is no specific provision debarring the release of the vehicle seized under the Act. When the provision under Section 451 Cr. P.C. is not inconsistent with any specific provision under NDPS Act, the same will have to be applied as mandated under Section 51 of the said Act.....

25. Sections 60(3) and 63 of NDPS Act also have relevance to the issue involved in this case for determination. Section 60(3) and section 63 of the NDPS Act reads as follows:—

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) xxxxxx xxxxx

(2) xxxxxx xxxxx

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscation.- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharge, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or

section 62, and, if it decides that the article is so liable, it may order, confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month, from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance [or controlled substance] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

26. A conveyance seized under the NDPS Act shall be liable to confiscation only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the NDPS Act is liable to confiscation only on conclusion of trial. The trial Court has to take independent decision on the question of confiscation irrespective of the conviction or acquittal or discharge recorded by it. But, at any rate, the trial Court is not supposed to pass any order of confiscation before expiry of one month from the date of seizure or without affording opportunity to the claimant.

27. In the case in hand, there is no dispute that the petitioner is the owner of the vehicle in question having all the documents with regard to his vehicle. It is claimed by the petitioner that his vehicle be released as per provision of Cr. P.C. 451 and 457, in the light of the judgment

of Sunderbhai Ambalal Desai's case (supra). If we go through the general provisions in this regard, in the Cr. P.C., the seized vehicle can be released as per Sections 451 and 457 of Cr. P.C. but here in the instant case, the vehicle has been seized under the provisions of NDPS Act and NDPS Act admittedly is a special act which prescribes a procedure for dealing in specified case and NDPS Act being a special statute, the provisions of special statute has to be followed by the Court.”

12. In **Sunderbhai Ambalal Desai v. State of Gujarat**², the Hon’ble Supreme Court observed that:-

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its 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 the 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.

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)*

² (2002) 10 SCC 283

“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.”.....

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.*

19. *For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.*

20. *Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical*

Analysed so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. *However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC 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 High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”*

13. The N.D.P.S. Act does not stipulate any provision debarring the confiscated property to be released. From the aforesaid provisions and citations it transpired that the vehicles seized even during the pendency of the proceedings can be released to the custody of the original owner on production of valid documents and subscribing to requisite legal formalities. In the instant case being no. 56 of 2008 has already been decided into an acquittal, the Learned Trial Court is to release the confiscated truck following the procedures enumerated in Sections 451 and 452 of the Code of Criminal Procedure, further taking into consideration the guidelines of ***Sunderbhai Ambalal Desai v. State of Gujarat (supra)***.

14. Accordingly, the instant criminal appeal stands disposed of.

15. The Learned Trial Court is to take necessary steps in releasing the vehicle after following the legal procedures.

16. There is no order as to cost.

17. I record my appreciation for the able assistance rendered by Ms. Debamita Mukherjee, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.

18. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
19. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)