

10.5.2023
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Ct. no. 3
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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRR 103 of 2023

In the matter of : Narendra Kumar Singh
...Petitioner

Mr. Subhasish Misra
Mr. Swarup Das ...for the Petitioner

Mr. Aditi Shankar Chakraborty, Ld APP
Mr. Sourav Ganguly ... for the State

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure challenging a portion of direction in the judgment dated 17.2.2023 passed by the learned Additional Session Judge, 1st Court, Coochbehar in connection with the NDPS case no. 42 of 2018 arising out of Mathabhanga Police Station case no. 140 of 2018 dated 10.5.2018 whereby and whereunder court below has confiscated the seized vehicle in question without adopting due course of law.

The petitioner contended that the petitioner is the sole proprietor of the vehicle being registration no. HR-38X/6756. Owing to the said prosecution case, the petitioner's said vehicle was seized by the police authority and it was kept in the police custody. Subsequently, the charge was framed in connection with said NDPS case and thereafter proceeded for

trial against the arrested persons and after a prolonged trial, the court below was pleased to pass a judgment on 17.2.2023 in connection with the said NDPS case no. 42 of 2018 whereby the court below has acquitted three FIR named accused persons from the prosecution case upon observing that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt through unimpeachable evidence.

The petitioner further submits that during the pendency of the said NDPS case no. 42 of 2018, the petitioner through his lawyer had approached the court below for releasing the vehicle and accordingly, the court below was pleased to give interim custody of the said vehicle, upon furnishing bank guarantee and thereafter the petitioner produced the said vehicle before the court till conclusion of the trial.

However, it reveals from the said judgment of acquittal dated 10.5.2018 that the petitioner's vehicle by which the alleged contraband article was allegedly transported, has been ordered to be confiscated by the said judgment. Petitioner strenuously argued that the petitioner's said vehicle ought to have been released by the court below with the passing of judgment, as confiscation of the said vehicle, might have served no lawful purpose, when the process of trial with regard to the said NDPS case has already been concluded by acquitting the accused persons. Thus, the petitioner contended that the confiscation order by virtue of said impugned

judgment dated 17.2.2023 passed by the court below is bereft of any reason and devoid of merit and accordingly, prayed for quashing that portion of direction from the said judgment.

Learned counsel for the State raised objection and referred Section 60(3) read with Section 63 of the NDPS Act and contended that unless the petitioner has proved that the vehicle was so used without his knowledge or connivance and that he had taken reasonable precautions against such use of vehicles, the order impugned does not call for any interference.

I have gone through the impugned ordering portion of the judgment dated 17.2.2023. By the said judgment, the court below has acquitted all the accused persons but he observed that on careful reading of Section 63 read with Section 60(3) of the NDPS Act, it is clear that until the trial is over, the confiscation proceeding cannot be initiated. This is the mandate of law which does not call for any interference but the learned court below has confiscated said vehicle to the State without following the procedure laid down in Section 63 read with Section 60(3) of the Act of 1985. In fact, Section 63 makes provision in connection with the procedure in making confiscation. Under the said provision, it is immaterial whether the accused persons are convicted or acquitted or discharged, the court shall decide whether the seized article is liable to confiscation under Section 60 or 61 or Section 62 and if it decides that the article is liable to confiscation, it may order

confiscation subject to the rider that no such order of confiscation of an article or things shall be made until expiry of one month from the date of seizure and without hearing the person who claims any right thereto and without considering the evidence, if any, which produces in respect of such claim.

In view of the aforesaid specific provision, the court below before passing the order confiscating the vehicle to the State, ought to have initiated confiscation proceeding in order to give an opportunity to the petitioner to prove that the vehicle was so used without knowledge or connivance of the petitioner and that the petitioner had taken all reasonable precautions against such user of vehicle, as mandated in Section 60(3) of the Act of 1985.

In view of above, the portion of the order in the judgment which states “accordingly, seized vehicle bearing no. HR-38X/6756 be confiscated to the State” is hereby set aside.

If the court below who passed the judgment is of the view that the vehicle seized during investigation is liable for confiscation will be at liberty to initiate appropriate, separate and independent proceeding for confiscation strictly in terms of Section 63 read with Section 60(3) of the Act of 1985 and in the event of initiation of such proceedings, he is requested to conclude the said proceeding at the earliest preferably within a period of three months from the date of commencement of proceeding.

Accordingly, CRR 103 of 2023 is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)