

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

CIRCUIT BENCH AT JALPAIGURI

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 166 of 2022

Rajat Gossai

Vs

The State of West Bengal.

For the Petitioner : Mr. Arijit Ghosh.

For the State : Mr. Aditi Sankar Chakraborty,
Mr. Sourav Ganguly.

Heard on : 10.04.2023

Judgment on : 12.04.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for setting aside of the Judgment/Order dated 07.04.2022 relating to confiscation of vehicle bearing No. WB 69A-3209, passed by the learned Additional Sessions Judge, 1st Court, Cooch Behar (NDPS) in NDPS Case No.92 of 2020.
2. The petitioner's case is that the petitioner made an agreement with one Rajib Barman, son of Khijen Barman of Ruiyerkuthi, Vetaguri, Police Station-Dinhata, District-Cooch Behar, Pin-736134 to rent out his vehicle to Rajib Barman and the said Rajib Barman was using the vehicle.
3. The petitioner came to know in June, 2022 from a reliable source that Rajib Barman had been entangled with a false case which was registered as Kotwali Police Station Case No.403 of 2022 dated 25.09.2020 under Section 20(b)(ii)(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 and the same numbered as NDPS Case No.92 of 2020. The investigating authority after completion of the investigation, filed a charge sheet under Section 20(b)(ii)(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985. Charge was framed, Trial commenced and after completion of the trial, **Rajib Barman was acquitted but the vehicle bearing no. WB69A-3209 has been confiscated to the State.**
4. The petitioner states that he is the registered owner of the aforesaid vehicle. There is no criminal antecedent of the petitioner. He was not transporting the contraband ganja in the vehicle. He had given his vehicle on rent to one Rajib Barman for lawful purpose and the said Rajib Barman

was using the vehicle. The purpose of use of the vehicle was without his knowledge or connivance.

5. It is submitted that the proceeding for confiscation may ensue in terms of Section 63(1) of The Narcotic Drugs And Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act in short), and the confiscation is to be made only after affording a reasonable opportunity of being heard to the person who has any right or claim.

6. That it is a well-settled principle that if the owner of the vehicle is not an accused in that case, a separate and independent proceeding has to be drawn for confiscation in terms of the express provisions in Section 60(3) of the NDPS Act to protect an innocent owner before confiscating his vehicle or conveyance.

7. The vehicle is lying under the open sky as a result of which condition of the vehicle is deteriorating day by day on account of lack of maintenance and natural wear and tear. As such the Court must give an opportunity of hearing to the person who may claim any right to the seized vehicle before confiscation of the seized vehicle.

8. **Mr. Arijit Ghosh, learned counsel for the petitioner** submits that the impugned order for confiscation of the vehicle as passed by the learned trial court is bad in law and the same deserves to be set aside for the ends of justice.

9. **Mr. Ghosh** further submits that the petitioner is the registered owner of the aforesaid vehicle and there is no criminal antecedent of the petitioner. That he was not transporting the contraband ganja in the vehicle. He had given his vehicle on rent to one Rajib Barman for lawful purpose and the

said Rajib Barman was using the vehicle. The purpose for which the vehicle was used was without his knowledge or connivance.

10. That the proceeding for confiscation may ensue in terms of Section 63(1) of the Narcotic Drugs And Psychotropic Substances Act, 1985 (hereinafter referred as NDPS Act in short) and the confiscation only be made after affording reasonable opportunity of being heard to the person who has any right or claim over the said conveyance.

11. That the impugned order for confiscation of the vehicle is a gross abuse of the process of court.

12. That the order of the learned trial court for confiscation of the vehicle is otherwise bad in law and is thus, liable to be set aside.

13. **Report dated 02.02.2023 filed by S.I Raju Roy of Kotwali P.S was considered by the trial court while passing the order of confiscation.**

The report is before this court, wherein the relevant portion of the report is as follows:-

*“During investigation of this case I sent prayer to the DYSP traffic Cooch Behar and learnt that, the owner of above seized Pickup Van bearing No. **(WB-69/3209)** is Rajat Gossai, S/O Laharu Gosai of Village Munda Line, Ramjhora Tee Guardian PS. Birpara District Alipurduar.*

*During investigation of this case on 01.11.2020 and 27.01.2021 I sent Notice u/s 91 Cr.P.C to the owner of the vehicle, **(WB-69/3209)** namely, Rajat Gossai, S/O, Laharu Gosai of Vill, Munda Line, Ramjhora Tee Guardian PS. Birpara District-Alipurduar Vide Kotwali PS Dr. No.6262/20 dated 01/11/2020 and Dr. No.617/21 dated 27.01.2021, Shri Rajat Gossai, S/o, Laharu Gosai of Vill, Munda Line, Ramjhora Tee Guardian PS. Birpara District, Alipurduar received the notice but did not make any response. In the mean time trial of the case has been completed. I have collected a copy of Judgement and learnt that FIR named accused Rajib Barman (26), S/o, Khijen Barman of Vill, Ruiyer Kuthi, Vetaguri, PS Dinhata, Dist. Cooch Behar is acquitted from the charge of this case. And the seized vehicle bearing registration no. **WB-69A/3209***

confiscated to the state under the provision of Sec. 63(I) of the act on the ground that the vehicle was so used without the knowledge and connivance of the owner himself. Moreover, the ownership has not been established. Copy of Judgment is attached herewith.

During investigation it is revealed that there is no knowledge of the owner of the vehicle in respect of seized of contraband NDPS article from the seized vehicle but the owner did not make any prayer before the Ld. Additional Sessions Judge, 1st Court, Cooch Behar (NDPS) court the owner of the vehicle also did not make any response the notice u/s 91 of Cr.P.C to produce the valid papers of the seized vehicle before the I.O. As the owner of the seized vehicle had no knowledge regarding seized of contraband NDPS article from the vehicle, investigating authority has no objection to return the seized vehicle to the owner on production and verification of the papers documents in respect of the ownership of the vehicle.”

Sd/-
SI of Kotwali PS/CBR

14. The relevant portion of the judgment and order under revision in respect of the confiscation of the vehicle is as follows:-

NDPS Case No. 92/20

Dated:-07.04.2022

.....Seized contraband alamat i.e. ganja be destroyed after the appeal period is over. The vehicle in question bearing number WB-69A-3209 hence confiscated to the state under the provision of Sec. 63(1) of the act on the ground that the vehicle was so used without the knowledge and connivance of the owner himself. Moreover, the ownership has not been established.....”

Dictated & Corrected by,

Sd/-
Additional Sessions Judge, 1st Court,
Cooch Behar (NDPS)

15. **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."*

16. 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."*

17. 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.”*

17. **Thus in view of the guidelines of the Supreme Court,** the findings of the Additional Sessions Judge, 1st Court, Cooch Behar (NDPS) is not in accordance with law and thus an abuse of the process of law/court and is thus liable to be set aside.
18. Accordingly the order under revision dated 07.04.2022 passed by the learned Additional Sessions Judge, 1st Court, Cooch Behar (NDPS),

in connection with NDPS Case No. 92 of 2020 under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 arising out of Kotwali Police Station Case No. 403 of 2022 dated 25.09.2020 is set aside in the interest of justice being not in accordance with law.

19. 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.
20. **CRR 166 of 2022 is allowed.**
21. There will be no order as to costs.
22. All connected Application stand disposed of.
23. Interim order if any stands vacated.
24. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
25. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)