

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 216 of 2022

Premjit Roy

Vs

The State of West Bengal.

For the Petitioner : Mr. Subhasish Misra,
Mr. Swarup Das.

For the State : Mr. Aditi Sankar Chakraborty, PP
Mr. Biswarup Roy.

Heard on : 05.04.2023

Judgment on : 11.04.2023

Shampa Dutt (Paul), J.:

1. The revision is heard in presence of the learned counsel for the State.
2. This revision is against an order dated 22.07.2022 passed by the learned Additional Session Judge, 1st Court, Cooch Behar (NDPS), in connection with NDPS Case No. 90 of 2021 under Section 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substance Act arising out of Dinhata Police Station Case No. 428 of 2021 dated 20.08.2021.
3. The petitioner's case is that he is the registered owner of a vehicle being Maruti Suzuki celerio VXI bearing No. WB 64X 8226. The petitioner's said vehicle was seized by the police authority and the present petitioner was arrested along with one Majidul hoque. They were later released on bail by virtue of the Hon'ble court order dated 17.12.2021.
4. The prosecution case under the Narcotic Drugs and Psychotropic Substance Act was registered as Dinhata Police Station Case No. 428 of 2021 dated 20.08.2021 in respect of which the alleged truck was seized which was illegally carrying such contraband articles along with the two persons who were in possession of the said alleged truck. It appears from the seizure list that the petitioner's vehicle has also been allegedly seized by the investigating agency from the said place of occurrence. It is further stated that not a single quantum of the alleged contraband articles have been seized from the direct or indirect physical possession of the petitioner nor from the petitioner's vehicle being Maruti Suzuki

celerio VXI bearing No. WB 64X 8226. The petitioner's vehicle has been illegally seized and the said vehicle is still under the custody of the police authority.

5. After concluding the investigation charge sheet bearing No. 72 of 2022 dated 11.02.2022 under Section 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substance Act has been submitted.
6. The petitioner states that the learned Trial Court assumes power and jurisdiction by virtue of Section 451 of the Cr.P.C., wherein it is laid down regarding the order for custody and disposal of property by a criminal Court with respect to any criminal case in which trial is pending. Therefore, the said petition before the learned Additional Session Judge, 1st Court, (NDPS) praying for release of the said vehicle on 22.07.2022 ought to have been granted by the learned Trial Court as the custody of the said vehicle might serve no lawful purpose for the process of trial with regard to NDPS Case No. 90 of 2021 in connection with Dinhata Police Station Case No. 428 of 2021 dated 20.08.2021 under Section 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substance Act as there is no criminal antecedent against the petitioner as well as the said vehicle in the purported charge sheet being Charge Sheet No. 72 of 2022 dated 11.02.2022 under Section 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substance Act.
7. The petitioner has thus prayed for setting aside of the order under revision and return of the vehicle in the interest of justice.

8. **Mr. Aditi Shankar Chakraborty, learned counsel for the State** is present.
9. The order dated 22.07.2022 in NDPS Case No. 90/21 under revision is as follows:-

NDPS Case No.-90/21

Order No.- 27

Dated:- 22.07.2022

.....Ld. Advocate submitted that the Hon'ble Court has been pleased to refuse the application with liberty to file fresh application before this court within the provision of Section 451 of Cr.P.C.

The order dated 07.07.22 in CRR 43/22, Hon'ble Justice Ananda Kumar Mukherjee passed the following order stating that "Petitioner is granted liberty to file an application under Section 451 of the Code of Criminal Procedure before the Jurisdictional Court for return of the vehicle and after considering all aspects, Learned Judge, Special Court shall dispose of such application in accordance with law and at the earliest before conclusion of trial."

It is found from the order of Hon'ble High Court that the petitioner referred the said Criminal Revision against the order passed by this court vide order no. 14, dated 07.02.22. In regards to the order of Hon'ble High Court, I have again gone through the order dated 07.02.22 wherein the prayer of the petitioner was refused after considering the provision of law u/s. 60(3) of NDPS Act. As it is found from the provision of Section 60 of the Act, the court has ample jurisdiction to return the vehicle. I have once again gone through the decision *Tridip Mitra vs. State* 2006(2) CHN 198 and found that the Hon'ble Court had considered the return of the vehicle with certain conditions. The fact remain, that the present petitioner is an accused of this case and 12,800 bottles of cough syrup has been recovered. Primarily, there is no hesitation that those being consigned for illegal gain. It has to keep in mind that provision of Section 63 is to be followed with Section 61 and 62. The charge has already framed. Next date has been posted for evidence.

On careful perusal of the record, it shows that the Hon'ble Court pleased the judgment not in directive way rather for

consideration. I, therefore, hold that mere refusal of return of the vehicle would not violation of Hon'ble Court's order. In regards to the order, I am not inclined to release the vehicle at this stage. The specific provision of Section 60 is to be followed, as there is provision to deal with the return of vehicle. The provision of Section 451 Cr.P.C. is to be ignored in this case.

Hence, the prayer for return of the vehicle is refused.

Dictated & Corrected by,

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

10. **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.”*

11. **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."

12. 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.”

13. **Thus in view of the guidelines of the Supreme Court,** the findings of the Additional Session 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.
14. Accordingly the order under revision dated 22.07.2022 passed by the learned Additional Session Judge, 1st Court, Cooch Behar (NDPS), in connection with NDPS Case No. 90 of 2021 under Section 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substance Act arising out of Dinhata Police Station Case No. 428 of 2021 dated 20.08.2021 is set aside in the interest of justice being not in accordance with law.
15. 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.
16. **CRR 216 of 2022 is allowed.**
17. There will be no order as to costs.

18. All connected Application stand disposed of.
19. Interim order if any stands vacated.
20. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
21. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)