

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

CIRCUIT BENCH AT JALPAIGURI

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 293 of 2022

Sunil Kumar

vs.

The State of West Bengal.

For the Petitioner : Mr. Subhasis Mishra.

For the State : Mr. Aditi Shankar Chakraborty,
Mr. Ujjwal Luksom.

Heard on : 12.04.2023

Judgment on : 13.04.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an impugned order dated 28.10.2022 and the impugned judgment dated 29.10.2022 passed by the learned Additional Session Judge, 1st Court, Cooch Behar (NDPS), in connection with NDPS Case No. 102 of 2021 under Section 21(b) (II) (c)/25/29 of the Narcotic Drugs and Psychotropic Substance Act arising out of Mathabanga Police Station Case No. 500 of 2021 dated 07.09.2021.
2. The Order under revision dated 28.10.2022 is as follows:-

NDPS Case No. 102/21***Order No. 22
Dated 28.10.22***

".....Today is also fixed for hearing on the point of returning of vehicle.

It is found that one of the Power of Attorney holder filed a petition to take back the seized vehicle bearing No. HR-55L-7603. Accordingly, report was called for from the I.O.

It is found that I.O vehemently opposes to return the said vehicle.

Perused the record and it shows that 102 kgs of ganja was recovered from the said vehicle. In the circumstances, I am not inclined to return the said vehicle to its registered owner. Accordingly, the prayer for returning of the vehicle is considered and rejected."

Dictated & Corrected by,

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

3. The Order under revision dated 29.10.2022 is as follows:-

NDPS Case No. 102/21**Order No. 23****Dated 29.10.22**

“.....The seized vehicle i.e. milk tanker vehicle bearing registration no. HR-55L-7603 be confiscated to the state under the provision of Section 60(3) of the NDPS Act as the owner could not establish that the vehicle was used for carrying the contraband articles without his knowledge.”

Dictated & Corrected by,

Sd/-

**Additional Sessions Judge, 1st Court,
Cooch Behar, (NDPS)**

4. 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."

5. 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.”*

6. **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.

7. Accordingly the order dated 28.10.2022 and the impugned judgment dated 29.10.2022 passed by the learned Additional Session Judge, 1st Court, Cooch Behar (NDPS), in connection with NDPS Case No. 102 of 2021 under Section 21(b) (II) (c)/25/29 of the Narcotic Drugs and Psychotropic Substance Act arising out of Mathabanga Police Station Case No. 500 of 2021 dated 07.09.2021 is set aside in the interest of justice being not in accordance with law.
8. The learned Trial Court will return the vehicle as per the provision of Section 452 of Cr.P.C. **only to the registered owner and not to any power of attorney holder**, 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.
9. **CRR 293 of 2022 is allowed.**
10. There will be no order as to costs.
11. All connected Application stand disposed of.
12. Interim order if any stands vacated.
13. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
14. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)