

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2092-SB-2004

Reserved on: 19.12.2022

Date of Pronouncement: 09.01.2023

Harbhajan Singh

...Appellant

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Gurnoor Singh, Advocate
for the appellant.

Mr. Rajinder Kumar, DAG, Haryana.

N.S.Shekhawat J.

The present appeal has been preferred against the order dated 27.08.2004 passed by the Court of learned Special Court, Kurukshetra, whereby the prayer of the appellant, who is the registered owner of the confiscated car bearing registration No.HR-02B/6651, was declined on the ground that no proceedings were pending before the learned Special Court, Kurukshetra in the present case.

The story of the prosecution, as it emerges from the report under Section 173 Cr.P.C. is that on 06.11.1999, ASI Jahangir Singh along with other police officials was present on patrolling in crime detection duty and in the meantime, they received a secret information that Jasbir Singh @ Pappi S/o Darshan Singh, resident of Village Sujra was coming to village Sujra after

loading crushed poppy husk in car bearing registration No. HR-02B/6651, driven by Harbhajan Singh S/o Sardool Singh and if nakabandi was held, they could be apprehended at the spot. Finding the said information reliable, the nakka was set up and after sometime, the car bearing registration No. HR-02B/6651 came from Babain side and turned towards village Sujra. On seeing the police party, the driver stopped the car immediately and ran away after leaving the said car. One person was caught at the spot and he disclosed his name to be Jasbir Singh @ Pappi S/o Darshan Singh resident of Sujra and the car was also taken into possession. On searching the car, a gunny bag was found on the back seat and during the course of interrogation, the name of the driver, who had fled from the spot, was found to be Bhajan Singh S/o Sardool Singh, resident of village Sujra. Since the police party had suspicion that some narcotic substance was being carried in the car, a notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to be as the 'Act') was served upon Jasbir Singh and Jasbir Singh, suspect, opted to get his search conducted in the presence of a Gazetted Officer. The memos were prepared at the spot in this regard and the DSP, Headquarter was requested to reach at the spot by sending a wireless message. After sometime, the DSP reached at the spot in the government vehicle and on his direction, the search was conducted and 20 kgs of crushed poppy husk was recovered from the car, out of which 250 grams was separated as sample. The sample as well as the residue poppy husk were converted into separate parcels and were sealed with the seals bearing impressions 'JS' and the DSP also affixed his seal bearing impressions 'BS'. The car bearing registration No. HR-02B/6651 was also taken into possession by the police and the seal bearing impressions 'JS' was

handed over to ASI Siya Nand and the recovery memo was also attested by the DSP. After necessary formalities as per law, the FIR in the instant case was registered.

After registration of the case and investigation, the challan was presented only against Jasbir Singh @ Pappi S/o Darshan Singh, co-accused, whereas Harbhajan Singh was found innocent.

After presentation of challan, the trial only progressed against Jasbir Singh who was convicted under Section 15 of the NDPS Act and was sentenced to rigorous imprisonment for a period of six months and to pay a fine of Rs.10,000/- and in default thereof, to further undergo imprisonment for three months. With regard to the case property, i.e. poppy husk, the learned trial Court observed that the same stood confiscated to the state and would be disposed off in accordance with the rules after the expiry period of limitation for filing appeal etc. However, the learned Special Court, Kurukshetra also held that the proceedings for confiscation of the conveyance used in transporting the contraband would be initiated separately as contemplated under Section 60 of the Act. With these observations with regard to the confiscated vehicle i.e. car bearing registration No.HR-02B/6651, the trial formally concluded against Jasbir Singh.

It appears from the record that after conclusion of the trial against Jasbir Singh, notice under Section 60 of the Act was issued to Harbhajan Singh S/o Sardool Singh, resident of village Sujra, District Kurukshetra, who was the registered owner of the confiscated car bearing registration No.HR-02B/6651, as per the order passed by the learned Special Court, Kurukshetra. On the said notice, the report from the police station was received and the learned Special

Court, Kurukshetra held that no proceedings remained pending in the criminal trial, consequently, no orders were passed and the file was ordered to be consigned to the record room by the learned Special Court. From a perusal of the impugned order dated 27.08.2004, passed by the learned Special Court, Kurukshetra, it is apparent that no formal order was ever passed with regard to the confiscation of the car bearing registration No.HR-02B/6651. Even the proceedings were ordered to be closed by the learned Special Court on the ground that the trial had already concluded and no formal orders were passed with regard to the confiscation.

I have heard learned counsel for the appellant as well as the learned State Counsel.

Learned counsel for the appellant has vehemently argued that the learned Special Court has completely overlooked the mandatory provisions of Section 60 to 63 of the NDPS Act. The learned Special Court, Kurukshetra did not provide proper opportunity of hearing to the present appellant and there was nothing on record to suggest that the appellant was involved in the commission of crime in any manner. Learned counsel further submitted that the proceedings under Sections 60 to 63 of the NDPS Act were to be initiated after the conclusion of the trial and the learned Special Court committed grave error in closing the matter only on the ground that the trial had concluded and no proceedings were pending in the case. The contentions raised by learned counsel for the appellant have been vehemently opposed by the learned State counsel and he prayed that the vehicle had been rightly confiscated by the learned trial Court and the impugned order is liable to be upheld by this Court.

It has been held by Orissa High Court in the matter of **Crl. Rev. No.481 of 2020** titled as “**M/s Pinnacle Clothing Co Vs. State of Odisha**” as follows:-

“8. To appreciate the contention of the parties, it would be apposite to have a look to the provision of dealing with disposal of the article seized in connection with cases under the NDPS Act, Section 52 of the N.D.P.S Act which mandates the Authority or Officer to take necessary steps with regard to the persons taken to custody and the articles seized, reads thus:-

"52. Disposal of persons arrested and articles seized - (1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to –

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under subsection (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

9. Sections 60, 61, 62 and 63 of the N.D.P.S Act deal with post-trial disposal of the articles mentioned therein. Section 63 deals with the manner of making confiscation. However, Section 63(2) deals with confiscation of the articles which are liable for confiscation under Sections 60, 61 and 62 of the N.D.P.S Act when the person

who has committed the offence, is not known. The said Sections are reproduced below :-

"60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation - (1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance [or controlled substances] which is liable to confiscation under subsection (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance [or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], 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.

61. Confiscation of goods used for concealing illicit drugs or substances - Any goods used for concealing any [narcotic drug, psychotropic substance or controlled substance] which is liable to confiscation under this Act shall also be liable to confiscation.

Explanation.- In this section "goods" does not include conveyance as a means of transport.

62. Confiscation of sale proceeds of illicit drugs or substances. - Where any [narcotic drug, psychotropic substance or controlled substance] is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

63. Procedure in making confiscations. –

(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, 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 articles 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 [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 subsection shall, as nearly as may be practicable, apply to the net proceeds of the sale."

10. A bare perusal of the aforesaid provisions would go to show that it is incumbent on the part of the Authority or officer who is in custody of the persons or articles seized in connection with a case under the N.D.P.S Act to take steps for disposal of the person and articles in the manner known to law. The same necessarily implies that the officer concerned has to produce before the Court the articles seized and also the person concerned who has been taken to custody in connection with a case under the N.D.P.S Act. Sections 60, 61 and 62 of the N.D.P.S Act provide for the post-trial decision required to be taken by the Court with regard to disposal of the illicit narcotic drugs, psychotropic substances, controlled substances, plants, articles and conveyances, so also any lawful drugs and the narcotic drugs or substances [or controlled substances] which though are imported or exported lawfully, but along with the same, there are illicit narcotic drugs or psychotropic substances or controlled substances, and also the materials, apparatus, utensils which are used, the receptacles or packages covering used for such contraband drugs and the contents in the same, and animal or conveyance used in committing such offence. Section 61 of the N.D.P.S Act speaks of confiscation of goods besides the conveyance, which is used for concealing any narcotic drug or psychotropic substance or controlled substance which are liable for confiscation under Section 60 of the N.D.P.S Act. Section 62 of the N.D.P.S Act relates to confiscation of the sale proceeds of such illicit drugs or substances. Section 63 of the N.D.P.S Act prescribes the procedure for confiscation with regard to the articles or things seized under

the N.D.P.S Act, which are liable for confiscation under Sections 60, 61 and 62 of the N.D.P.S Act irrespective of conviction/acquittal or discharge of the accused tried for committing such offence in the trial. However, Section 63(2) of the N.D.P.S Act deals with disposal of the articles or things seized which are liable for confiscation under Sections 60, 61 and 62 of the N.D.P.S Act, but the person who committed the offence in connection therewith is not known. Exercise of such power under Section 63(2) of the NDPS Act, however, is subject to limitation that no order for confiscation/disposal can be made until expiry of thirty days of such seizure or without hearing the person, who comes forward claiming such article seized or without considering the evidence produced by him. The second proviso to the said subsection, however, speaks that if any article or thing seized in such case other than the narcotic drug, psychotropic substance [controlled substance], opium poppy, coca plant or cannabis plant, is liable to speedy and natural decay or the Court is of the opinion that it's immediate sale would be for the benefit of its owner, the Court may dispose of the same by sale without complying with the requirement as mentioned for confiscation as provided in the first proviso to the same. But, the sale proceeds thereof shall be subject to confiscation complying with procedure for confiscation of the articles sold.

11. Under the NDPS Act, when it was enacted, there was no provision for pre-trial disposal of the articles seized in the cases where the accused persons are known. But, later on, considering the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant considerations, in respect of any narcotic drugs, psychotropic substances, controlled substances, or conveyances, Section 52A of the NDPS Act was enacted, which empowers the Central Government to notify for disposal of narcotic drugs and psychotropic substance or controlled substance or conveyance, or class thereof soon after

seizure by such officer in such manner as that Government may provide from time to time. However, procedure for such disposal has been prescribed in the said section. The Central Government has also in the meanwhile come with a notification in this regard. The same necessarily oust the jurisdiction of the Court to exercise the power under sections 451 and 457 of Cr.P.C., 1973 in respect of those articles mentioned in the notification seized in connection with NDPS cases. But, the same is not relevant for the purpose of this case as the articles / goods sought to be released in this case are not the narcotic drugs or psychotropic substance or the conveyance, to which the said provision applies. ”

From a perusal of the record, it is evident that notice under Section 60 of the NDPS Act was served upon the appellant i.e., the registered owner of the car in question i.e. the car bearing registration No. HR-02B/6651. However, the proceedings in compliance of the mandatory provisions of Sections 60 to 63 of the NDPS Act were not held. Rather the learned Special Court wrongly declined to proceed with the matter only on the ground that the trial had already concluded in the present case and no proceedings remained pending in this case. Thus, the impugned order suffers from patent illegality and infirmity.

Hence the impugned order dated 27.08.2004 passed by the learned Special Court, Kurukshetra is set aside. The matter is remanded back to the learned trial Court with a direction to proceed with the proceedings of confiscation of car in question after making compliance with the provisions of Section 60 to 63 of the NDPS Act. Even the learned trial Court shall issue notice to the present appellant herein i.e. the registered owner of the vehicle and shall pass an order of confiscation only after hearing the registered owner of the

vehicle regarding his knowledge or connivance in the transportation of the poppy husk, using the vehicle owned by him.

With these observations, the criminal appeal is disposed of.

Pending applications, if any, are also disposed off, accordingly.

The trial court record be sent back, immediately.

Since the case is pending in the year 2004, the learned Special Court, Kurukshetra is directed to decide the matter expeditiously, preferably within a period of six months from today.

09.01.2023		(N.S.SHEKHAWAT)
hemlata		JUDGE
	Whether speaking/reasoned	: Yes
	Whether reportable	: Yes