S. No.220

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision:17.01.2023

1. CRM-M-47591 of 2021

Narinder Kumar @ Ninder .....Petitioner

Vs.

State of Punjab and others .....Respondents

2. CRM-M-47325 of 2021

Vikas Singh @ Vicky .....Petitioner

Vs.

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. R.P. Dhir, Advocate for the petitioner.
Mr. Randeep Singh Khaira, DAG, Punjab.

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DEEPAK GUPTA, J.

By way of the first petition filed under Section 482 Cr.P.C, petitioner Narinder @ Ninder seeks direction to respondents No.2 and 3 to return ₹6 lacs taken from him by respondent No.2 by setting aside the impugned order dated 20.09.2021 passed by learned Judge, Special Court, Hoshiarpur (Annexure P-2) in case FIR No.75 dated 13.06.2021 registered at Police Station Garhshankar District Hoshiarpur under Sections 21, 21(b) & 22 of the NDPS Act, 1985 (for short, `the Act'). By way of second petition, similar order dated 16.09.2021 is challenged by the petitioner Vikas alias Vicky in the same FIR, whereby direction is sought to return ₹1 lac taken from him.

2. As it emerges on perusal of the paper book, on 13.06.2021, secret information was received by Inspector Iqbal Singh of Police Station Garhshankar regarding indulgence of Narinder Kumar alias Ninder son of Vikramjit; Vikas Singh alias Vicky son of Davinder Singh; and Balwinder

Singh son of Baldev Singh to be engaged in illegal selling of the contraband/ heroin and that several cases were already registered against them. After making necessary statutory formalities, raid was conducted. Three persons named in the information were found in possession of 200 grams of heroin, which was taken into possession by making statutory compliances. Apart from this, an amount of ₹ 6 lacs from accused- petitioner Narinder Kumar alias Ninder and an amount of ₹1 lac from the petitioner- accused Vikas Singh alias Vicky was recovered, which was also taken into possession.

3. The two petitioners moved separate applications before learned Judge, Special Court, Hoshiarpur dealing with such matters for returning the amount. After obtaining the report from the concerned SHO, the applications were dismissed by way of the impugned orders by observing that no document had been produced by the petitioners regarding the drug money recovered from them and that proceedings under Section 68-F of the Act regarding the drug money were being initiated. It was also observed that amount so recovered from the petitioners was the case property, which could not be given to them.

4. It is contended by learned counsel for the petitioners that if the proceedings are initiated under Section 68-F of the Act, then it is the jurisdiction of the competent authority and there is a bar of jurisdiction of the Special Judge. Procedure under Section 68-F of NDPS Act is totally different. No notice has been received by any of the petitioners from the competent authority regarding forfeiture of the money nor it could be. Besides, there is no evidence with the prosecution nor any notice was issued nor any reasons have been recorded that the money recovered from the petitioner was the drug money and so, the impugned orders passed by the learned Special Judge are without jurisdiction.

5. In short reply filed by way of affidavit of Deputy Superintendent of Police, Sub-Division Garhshankar, District Hoshiarpur in CRM-M-47591 of 2021, it is contended that money so recovered from the petitioner is drug money and the same is the case property, which cannot be released. It is submitted further that during investigation of the case, the Investigating Officer could not find any property to have been illegally acquired by the petitioner and, therefore, no proceedings under Section 68-F of NDPS Act have been initiated. However, prayer to release the amount has been opposed on the ground that it is drug money and also the case property.

6. I have considered the submissions of both the sides and have perused the record.

7. Chapter VA containing Section 68A to 68Z was inserted by Act No.2 of 1989 w.e.f. 29.05.1989 in Narcotic Drugs and Psychotropic Substances Act, 1985. Earlier, heading of the said Chapter was “Forfeiture of Property Derived from or used In Illicit Traffic”. However, the said heading was substituted by Act No.16 of 2014 w.e.f. 1.5.2014 and now the heading of the Chapter reads as “Forfeiture of Illegally Acquired Property”.

8. Section 68A provides about the persons to whom the provisions of this Chapter applies. Amongst various types of persons, a person arrested or against whom warrant or authorisation of arrest has been issued is included within the term person, to whom the chapter applies.

9. Section 68B provides various definitions. Section 68B (g) defines “illegally acquired property” as under:-

> *“(g) illegally acquired property", in relation to any person to whom this Chapter applies, means,--*
>
> *(i) any property **acquired by** such person, whether before or after the*

commencement of this Chapter, wholly or partly ***out of or by means of any income, earnings or assets derived or obtained from or attributable*** *to the contravention of any provisions of this Act or the equivalent value of such property; or;*

(ii) any property acquired by such person, whether before or after the commencement of this Chapter, ***for a consideration, or by any means*** *wholly or partly traceable to any property referred to in sub-clause (i)* ***or the income or earning*** *from such property or the equivalent value of such property; or*

(iii) any property acquired by such person, whether before or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, wholly or partly ***out of or by means of any income, earnings or assets*** *the source of which cannot be proved, or the equivalent value of such property,*

and includes--

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, ***for a consideration, or by any means,*** *wholly or partly traceable to any property falling under item (A), or* ***the income or earnings*** *therefrom;"*

[Bold words emphasised by this court]

10. The term property is defined under Section 68B (h), which reads as under:-

"(h) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, wherever located and includes deeds and instruments evidencing title to, or interest in, such property or assets;"

11. It is evident from the above said definitions that the Chapter dealing with the illegally acquired property is applicable, where the property is acquired by the such person, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of any provisions of the Act or the equivalent value of such property. The property may be of any description. It may be corporeal or incorporeal, movable or immoveable, tangible or intangible. The words *"by means of any income, earnings or assets"* would clearly indicate the intention of the legislature that the property to be termed as "illegally acquired property" must have been so acquired by means of the income, earning or assets derived or obtained from or attributable to the contravention of the provisions of the Act, or the said property must have been acquired for a consideration or by means, wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from such property.

12. In ***Aslam Mohd. Merchant vs. Competent Authority & others,*** Criminal Appeal No.1053 of 2003 decided by Hon'ble Supreme Court on 08.07.2008, question before the Hon'ble Supreme Court, which arose for consideration was as to what are the statutory requirements for initiating valid proceedings under Chapter VA. During discussion on this issue, it was observed by Hon'ble Supreme Court:-

> *"18. It is, therefore, evident that the property which is sought to be forfeited must be the one which has a direct nexus with the income etc. derived by way of contravention of any of the provisions of the Act or any property acquired therefrom. What is meant by identification of such property having regard to the definition of 'identifying' is, that the property was derived from or used in the illicit traffic.*
> *19. The property having regard to the said definition would include any of the properties described therein and deeds of instruments evidencing*

interest therein derived from or used in the illicit traffic. ……..”

13. It was held by the Hon'ble Supreme Court that the property, which is sought to be forfeited must be the one, which has a direct nexus with the income etc., derived by way of contravention of any of the provisions of the Act or any property acquired therefrom.

14. In the present case, it is not stand of the respondents that the currency notes as recovered from the petitioners had been acquired by means of income or earnings or assets derived or obtained from or the same were attributable to the contravention of the provisions of the Act nor it is the case of the respondents that said money was the property acquired for consideration or by means wholly or partly traceable to the property referred to above.

15. Apart from above, Section 68E provides about “Identifying Illegally Acquired Property”, which reads as under:

> ***“68E. Identifying illegally acquired property.***-- *(1) Every officer empowered under section 53 and every officer-in-charge of a police station shall, or receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.*
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> *(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institution or any other relevant matters.*
>
> *(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.”*

16. Thus, as and when the officer empowered under Section 53 or the officer in-charge of the Police Station, is satisfied on the receipt of information

that the person to whom the Chapter applies holds any illegally acquired property, he is required to record reasons for doing so and then he is to proceed to take all the steps for tracing and identifying such property.

17. Section 68F provides about seizure or freezing of illegally acquired property, which reads as under:-

> ***"68F. Seizure or freezing of illegally acquired property.***—*(1) Where any officer conducting an inquiry or investigation under section 68E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:*
>
> *Provided that the competent authority shall be duly informed of any order made under this subsection and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.*
>
> *(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.*
>
> *Explanation.—For the purposes of this section, "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—*
>
> *(a) the creation of a trust in property;*
>
> *(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;*
>
> *(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the*

power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person."

18. Thus, the officer conducting inquiry or investigation under Section 68E should have reason to believe that any property in relation to which inquiry or investigation is being conducted is an illegally acquired property and the same is likely to be concealed, transferred or dealt with in any manner, which will result in frustrating the proceedings relating to forfeiture of such property. Then, he is required to make an order of seizing such property or that such property shall not be transferred. Sub-section (2) of Section 68F makes it further clear that any order passed under sub-section (1) shall not have any effect unless the order is confirmed by an order of the competent authority within a period of 30 days of its being made. The competent authority as per Section 68D of the Act is any Commissioner of Customs or Commissioner of Excise or Commissioner of Income Tax or any other Officer of the Central Government of equivalent rank to perform the functions of the competent authority as he be duly authorised by the official gazette of the Central Government.

19. Still further, before making any order regarding forfeiture, notice is required to be given to the concerned person as per Section 68H of the Act, which reads as under:-

> ***"68H. Notice of forfeiture of property****.—(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing)*

that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.

Explanation.—For the removal of doubts, it is hereby declared that in a case where the provisions of section 68J are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act."

20. In the present case, in the first place, it cannot be stated that money recovered along with the contraband is the 'illegally acquired property' or it can be termed as a 'property' within the meaning of Section 68B (h) or 68B(g) of the Act. As per the affidavit of the respondent, i.e. DSP as referred earlier, no proceedings have been initiated under Section 68F of the Act, as the Investigating Officer could not find any property to have been illegally acquired by the petitioner. Further, no intimation to the competent authority has been given. No notice under Section 68H for forfeiture of the money has been issued to the petitioners by recording the reasons in writing in this regard.

21. Since no order has been passed by the Investigating Officer, so obviously, there could be no question of confirmation of any such order by the competent authority as per Section 68F of the Act nor the competent authority has been informed with regard to the seizure or forfeiture of the property as per Section 68F of the Act.

22. In the above facts and circumstances, the currency notes as recovered from the petitioners by the Investigating Officer of the case cannot be considered to be illegally acquired property at this stage. As per own case of the respondents, no proceedings have been initiated regarding its forfeiture.

23. However, at the same time, fact can not be ignored that money from both the petitioners has been allegedly recovered along with the contraband. Recovery has been effected after conducting raid on the basis of information that petitioners were indulging in sale of contraband. So, there is large possibility that money so recovered is the sale proceeds of the contraband and thus, the case property, though it is to be established on the basis of evidence. Therefore, money recovered from the petitioners can not be returned at this stage, till the trial is concluded

24. Consequently, both these petitions are hereby rejected.

January 17, 2023 **(DEEPAK GUPTA)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No