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

CRA-S-1557-2020

Date of decision: 23.04.2024

Bachhitar Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. A.S. Brar, Advocate for the appellant.

Mr. Kuljit Singh, Addl. A.G. Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present appeal has been filed by the appellant Bachhitar Singh under Section 454 Cr.P.C against the observation given by Judge, Special Court Moga in its judgment dated 18.01.2018 whereby while the accused persons including the appellant were acquitted of an offence punishable under Section 15(c) of the NDPS Act, the said Court ordered confiscation of tractor trolley bearing No.PB-25-B-9855 belonging to the appellant.

2. Counsel for the appellant submits that appellant is the registered owner of said tractor trolley and in this regard, he referred to copy of registration certificate Annexure P-1. The counsel for the appellant further submits that appellant and one Nishan Singh faced trial in criminal case having FIR No.56 dated 24.06.2012 under Section 15 NDPS Act, Police Station Mehna, District Moga. In the said criminal case, prosecution alleged

that police officials received secret information against both the accused and apprehended tractor trolley in question while three persons who were sitting on the said tractor trolley managed to escape and two of them were identified as petitioner Bachhitar Singh and Nishan Singh by members of the police party. On checking of the tractor trolley, 15 bags each having 35 kg of poppy husk were recovered. Subsequently, petitioner and Nishan Singh faced trial and were finally acquitted vide judgment dated 18.01.2018 by Judge, Special Court, Moga. The counsel for the appellant further submits that no appeal is filed by the State against said judgment of acquittal. It is further submitted that petitioner was falsely implicated in the said case and the tractor trolley in question was also planted by the police. The counsel for the appellant further submits that the trial Court while passing judgment dated 18.01.2018 came to conclusion that PW-5 ASI Gulzar Singh, member of the police party was inimical towards the petitioner and thus, the fact that petitioner was falsely implicated in the present case could not be ruled out. The counsel for the appellant has further submitted that as the prosecution failed to prove recovery of alleged contraband from tractor trolley in question, the State has no right to confiscate the same. So, prayer is made that the present appeal be allowed and the order passed by the trial Court with regard to confiscation of the said tractor trolley deserves to be set aside.

3. The present appeal is contested by the State counsel who submits that contraband was recovered from the tractor trolley bearing No.PB-25-B-9855 which was registered in the name of petitioner. However, the State counsel on instructions from ASI Sandeep Singh of Police Station Mehna has not disputed the fact that both the accused including petitioner

were acquitted by the trial Court vide judgment dated 18.01.2018 and that no appeal has been filed by the State against the said judgment.

4. I have considered the submissions made by counsel for the parties.

5. Admittedly, tractor trolley in question owned by the petitioner was taken into possession by the police in criminal case having FIR No.56 dated 24.06.2012 under Section 15 of NDPS Act, registered at Police Station Mehna, District Moga and in the said trial, both the accused including petitioner were acquitted by the trial Court vide judgment dated 18.01.2018. The State had not filed any appeal to challenge the said judgment of acquittal.

6. Undoubtedly, appellant who faced trial was acquitted vide judgment dated 18.01.2018. Thus, it is apparent that appellant had no knowledge that the tractor trolley owned by him was being used for transporting narcotics. Further, no notice or opportunity of hearing was given to the appellant by the trial Court while directing confiscation of his tractor trolley bearing No.PB-25-B-9855. In the given circumstances, the direction given by the trial Court regarding confiscation of the said vehicle is not sustainable in the eyes of law and deserves to be set aside.

7. In light of the above discussion, the present appeal is allowed and the judgment dated 18.01.2018 passed by Judge, Special Court, Moga to the extent whereby direction is given to confiscate tractor trolley bearing No.PB-25-B-9855 to the State, is hereby set aside.

23.04.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No