
(2016) 04 P&H CK 0109
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 373 of 2016 (O&M).

Smt. Rano

APPELLANT

Vs

Appellate Tribunal and Others

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 68, 68Z

Citation : (2016) 2 LawHerald 1805 : (2017) 1 RCRCriminal 520

Hon'ble Judges : Mahesh Grover; Lisa Gill, JJ.

Bench : Division Bench

Advocate : Ashok Giri, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mahesh Grover, J. - The appellant impugns the order of the learned Single Judge dated 22.01.2016 questioning the order by which his property (residential house) was "freezed" in terms of Section 68F of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act"). The relevant provisions of Section 68A(cc) and (d) of the Act, which would have a bearing on the controversy, are extracted here below:-

(cc) every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of a similar offence under any corresponding law of any other country.

(d) every person who is a relative of a person referred to in clause (a) or clause (b) or clause (c) [or clause (cc)];

2. Likewise, Section 68Z of the Act in terms of which the appellant seeks release of his property is also extracted here below:

Release of property in certain cases. - (1) Where the detention order of a detenu is set aside or withdrawn, properties seized or frozen under this Chapter shall stand released.

(2) Where any person referred to in clause (a) or clause (b) or clause (cc) of sub-section (2) of section 68A has been acquitted or discharged from the charges under this Act or any other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorisation of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released.]

3. Learned Single Judge had noticed that the entire family of the appellant was involved in many cases under the Act. The details of cases against the appellant, which were also noticed, are extracted here-below:-

Sr. No. FIR number/year Under Section Police Station and District Status

- 1 182/1993 15/61/85 NDPS Act Nakodar/Jalandhar Acquittal
- 2 111/2000 15/61/85 NDPS Act Nakodar/Jalandhar Acquittal
- 3 56/2005 15/61/85 NDPS Act Nakodar/Jalandhar Acquittal
- 4 73/2007 15/61/85 NDPS Act Nakodar/Jalandhar Punished for 3 months
- 5 259/2008 15/61/85 NDPS Act Nakodar/Jalandhar Punished for 3 months
- 6 49/2008 15/61/85 NDPS Act Nakodar/Jalandhar Punished for 1? months
- 7 178/2009 15/61/85 NDPS Act Nakodar/Jalandhar Punished for 10 years along with fine of Rs. 1 lac
- 8 70/2013 15/61/85 NDPS Act Nakodar/Jalandhar Pending
- 9 206/2014 15/61/85 NDPS Act Nakodar/Jalandhar Pending
- 10 85/2014 15/61/85 NDPS Act Sadar/Nawanshahar Pending

4. The details of cases against the husband of the appellant are extracted here below:-

Sr. No. FIR number/year Under Section Police Station and District Status

- 1 14/1983 15/61/85 NDPS Act Nakodar/Jalandhar
- 2 173/1983 15/61/85 NDPS Act Nakodar/Jalandhar
- 3 77/1984 61/1/14 NDPS Act Nakodar/Jalandhar
- 4 194/1984 61/1/14 NDPS Act Nakodar/Jalandhar
- 5 312/1984 15/61/85 NDPS Act Nakodar/Jalandhar

6 176/1986 15/61/85 NDPS Act Nakodar/Jalandhar
7 326/1986 61/1/14 NDPS Act Nakodar/Jalandhar
8 452/1986 15/61/85 NDPS Act Nakodar/Jalandhar
9 110/1992 15/61/85 NDPS Act Nakodar/Jalandhar
10 36/1993 15/61/85 NDPS Act Nakodar/Jalandhar
11 50/1993 15/61/85 NDPS Act Nakodar/Jalandhar
12 331/2000 15/61/85 NDPS Act Nakodar/Jalandhar
13 487/2003 15/61/85 NDPS Act Nakodar/Jalandhar
14 286/2012 15/61/85 NDPS Act Nakodar/Jalandhar
15 70/2013 15/61/85 NDPS Act Nakodar/Jalandhar
16 53/2014 15/61/85 NDPS Act Nakodar/Jalandhar

5. The order freezing the property was passed on the basis of three FIRs against the appellant. The particulars of which are as under :-

Sr. No. FIR Number and Date Under Section Police Station

1 182 dated 28.10.1993 15 of NDPS Act Nakodar
2 56 dated 02.04.2005 15 of NDPS Act Nakodar
3 73 dated 24.03.2007 15 of NDPS Act Nakodar

6. Learned counsel for the appellant contends that out of these three FIRs, which formed the basis of freezing order, the appellant has been acquitted in two while in third, she was let off after three months on account of seized quantity being noncommercial.

7. An argument has, thus, raised that since on the date of passing of the order, there was no case pending against the appellant so the property could not have been seized.

8. The second limb of the argument is that on the date of passing of the order adverse to the appellant, there was no detention and lastly it has been submitted that the appellant has got no opportunity to rebut the stand of the respondents regarding the details of the cases pending against the appellant and her family members.

9. So far as this limb of argument is concerned, we put it to the learned counsel for the appellant as to whether he has placed any material or made any assertion in the present appeal controverting the stand of the respondents regarding the pendency of cases against the appellant and his family members, it has been candidly conceded by learned counsel for the appellant that this has not been done. Therefore, we would have no option to accept that the stand of the

respondents in this regard is correct.

10. Reverting back to the main controversy, we are of the opinion that Section 68A (cc) of the Act does not even remotely talk of conviction or the result of prosecution. The authorities under the Act are enabled to act under this provision against every person, who has been "arrested" or against whom a "warrant or authorisation of arrest" has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more.

11. It is not in dispute that the appellant was indeed arrested for commission of an offence inviting imprisonment of a term of ten years. The plea that commercial quantity was not recovered from the appellant is inconsequential. If the provisions of Section 15 of the Act are to be seen, it provides for a punishment of a term, which may extend to ten years in a case where quantity recovered is less than commercial but greater than small quantity. In the instant case, the appellant was found to be in possession of 14.5 kgs of poppy husk, which was greater than small quantity prescribed under the Act.

Thus, the argument of learned counsel for the appellant is of no avail to him.

12. Apart from this, we are also convinced that Section 68D of the Act would also enable the authorities to freeze the property of the appellant as her husband and son have also been arrested under the provisions of the Act for offence which invite imprisonment up to a term of 10 years or more.

13. Reliance on Section 68Z of the Act is equally inconsequential for it talks of detention of and release of property on its being set aside. Concededly, the appellant was arrested for commission of an offence under NDPS Act and never detained as a preventive measure. Section 68Z of the Act only talks of release of "seized" or "freezed" property in the event of revocation of detention.

14. For the aforesaid reasons, when there is no illegality committed by the respondents and the appellant and her family being habituated to offences of this kind leading to a strong presumption that the house belonging to them must have the foundations of ill-gotten wealth, we find absolutely no reason to differ with the findings recorded by the learned Single Judge and holding the appeal to be without merit.

15. The appeal is consequently dismissed.