

(2011) 05 MP CK 0062

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 432 of 2010

Yadwinder Singh

APPELLANT

Vs

State of Madhya Pradesh and Others.

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 451, 457(1)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 43, 60, 60(3), 61, 62

Citation : (2011) 2 JLJ 347 : (2011) 4 MPHT 171 : (2011) 2 MPJR 273

Hon'ble Judges : Giriraj Das Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Mr. Giriraj Das Saxena, J.

This criminal revision u/s 397/401 of the Code of Criminal Procedure, 1973 is directed against an order dated 5th April, 2010, passed in Special Case No. 01/08 (NDPS) by the Second Additional Sessions Judge, Morena to the Court of First Addl. Sessions Judge, Morena, specially empowered as Special Judge under the NDPS Act, dismissing thereby the application u/s 451, Cr.PC for handing over the possession and custody of the vehicle involved in crime relating to NDPS Act.

The facts in brief, just for the decision of the revision petition are that in case Crime No. 08/2008 Truck No. HR 37A 4616 was seized carrying illegally poppy-husk weight 2300 kg. without valid licence by accused Nirmal Singh Jat, driver of the truck and Kuldeep Singh Jat, the cleaner of the truck. The accused were arrested and the truck alongwith contraband article poppy husk was seized. After investigation the charge-sheet was filed before the Trial Judge. The trial is under progress. During trial, the application for handing over the seized truck was filed by the Power of Attorney of the Registered owner which was rejected on the ground that the questioned truck is involved in serious crime and the trial will be concluded in near future. Hence, this revision petition before this Court.

Learned Counsel appearing for the petitioner contended that the learned Trial Court while passing the impugned order has failed to exercise jurisdiction vested in it and committed gross jurisdictional error in passing the impugned order which deserves to be set aside. The learned Trial Court did not consider that if the seized truck is kept for a long time in open place in the police station, there is danger of it being damaged by vagaries of weather. The petitioner is the Power of Attorney holder of the registered owner who submitted an application for release of the vehicle on interim custody on Supurdginama, till the trial is concluded. He is ready and willing to comply with all the conditions which may be imposed for production of the truck seized or comply the order of confiscation which may be passed after trial by the Trial Court. Accordingly, it is prayed that the impugned order be set aside and an appropriate order which may be deemed fit in the facts and the circumstances of the case may be passed.

Learned Public Prosecutor for the respondent No. 1/State opposed the petition on the ground that a huge quantity of poppy-husk has been recovered from the vehicle and if the vehicle is released at this stage, it would frustrate the purpose of the NDPS Act.

I have considered the rival contentions and perused the impugned order. It is not in dispute that the truck in question has not been claimed by any other person. It has been claimed by the Power of Attorney holder, appointed by registered owner of the offending truck.

The vehicle in question has obviously been seized u/s 43 of the Act. Relevant Sections 60 and 63 of the Act, which provide for disposal, inter alia, of the conveyance used for the purpose of committing the offence, so far as relevant, provide as under:

60. Liability of illicit drugs, substances, plants article, and conveyances to confiscation.--

(1) ***

(2) ***

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

Procedure in making confiscation.--

(1) In the trial of the 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 u/s 60, or Section 61 or Section 62

and if it decides that the article is so liable, it may order codification accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation u/s 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 for 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 substances, or 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 benefit of its owner, it may at any time direct it to be sold and the provisions of this section shall, as nearly as may be practicable apply to the net proceeds of the sale.

Under sub-section (3) of Section 60, the vehicle used as conveyance of the contraband is liable to confiscation in case it belongs to the person found in possession of the contraband and otherwise unless its owner proves that it was so used without his knowledge or connivance or of his agent, if any, and the person-in-charge of the conveyance and they had taken all reasonable precautions against such use. In the present case, the petitioner seeks interim custody of the vehicle on behalf of the owner of the truck and has alleged that neither he nor the owner of the truck had any knowledge about carrying of the contraband.

Now, the question is whether the truck in question used as a conveyance in commission of the offence is liable to be released or not under the Act or the Code, if applicable, in the circumstances.

Learned Counsel for the petitioner has contended that Section 451 of the Code applies, as it has not been over-ridden by the Act. In the application u/s 451 of the Code, it is alleged by the petitioner that the vehicle would greatly diminish in value as the same has not been kept in any garage and is lying in the open, unattended to and exposed to the vagaries of weather.

The provisions of Section 451 which provide for order for interim custody and disposal of the property pending trial is identical, in case the property is subject to speedy and natural decay and if it is otherwise in the interest of the owner to this extent, the provisions of Section 451 of the Code are not applicable. The object of the Act is to see that the vehicle which is used for such an offence is not made available to the persons who have indulged in these activities. They shall not have the benefit of such a vehicle. By and large.

if an accused person is himself the owner of the vehicle and he uses such a vehicle for the purpose of conveying the drugs, then, of course, it is possible for

the prosecution to contend that it is against the interest of justice that such a vehicle be given to the accused pending trial. But in a given case, it might be that a vehicle belonging to innocent owner is misused by the accused and in that event, if seized by the officer, it does not mean that such an owner has to wait till the trial is completed for the purpose of getting an order of return of the vehicle from the Magistrate. In such cases, subject to a guarantee that the vehicle becomes available for the purpose of confiscation, if any, the Court has necessarily the jurisdiction to pass an order for interim custody either u/s 451 or Section 457(1) of Cr.PC, as the case may be. An order u/s 451 or Section 457(1) of Cr.PC guarantees return of the vehicle at the time of the final hearing of the matter, or as and when called upon by the Court. It secures, subject to certain terms and conditions, the interim custody of the vehicle pending trial.

The Hon"ble Apex Court in the case of Ganga Hire Purchase Pvt. Ltd. Vs. State of Punjab and Others, held that interim custody of the seized or to be confiscated vehicle cannot be denied to a person who is registered owner, on the ground that the vehicle is liable to be confiscated u/s 60 of the Act.

In the case of Ganga Hire Purchase (supra), the Apex Court while interpreting the meaning of "Owner" held:--

Under sub-section (3) of Section 60 of the NDPS Act, any animal or conveyance used in carrying any narcotic drug or psychotropic substance is liable to confiscation, unless the owner of the 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 precaution against such use. There is no dispute that the vehicle in question was found to be carrying certain narcotics. The bone of contention of the appellant is that in view of the hire-purchase agreement, the appellant continues legally to be "the owner" of the vehicle so long as the entire hire-purchase money has not been paid and therefore, unless and until it is established that the vehicle was used for carrying of narcotics with the knowledge of the appellant, an order of confiscation could not have been passed.

It is further held by the Apex Court that the very purpose for engrafting sub-section (3) of Section 60 of the NDPS Act is to have it as a deterrent measure to check the offences under the Act in question which have been found to be dangerous to the entire society and in the absence of any definition of "owner" in the NDPS Act, it would be reasonable for us to construe that the expression "owner" must be held to mean the "registered owner" of the vehicle in whose name the vehicle stands registered under the provisions of the Motor Vehicles Act.

As already noticed above, in the present case, the interim custody of the vehicle is sought not by the registered owner but by the Power of Attorney holder on his behalf. Further, the vehicle has not been kept in secured place. It is lying in an open place at police station and as such there is every danger of it being damaged by vagaries of weather. It is further submitted by the learned Counsel

for the petitioner that the vehicle in the commission of offence was not used either with the knowledge or connivance of the registered owner and further all reasonable precautions against such use were taken. Thus, in view of the above, the order of the learned Trial Court denying the interim custody to the petitioner is not sustainable in law and the same deserves to be set aside and is hereby set aside.

Keeping in view the fact that the property seized is subject to speedy and natural decay and further in the light of the decision in the case of Ganga Hire Purchase (supra), it is directed that the truck No. HR-37A-4616 shall be delivered to the petitioner on Supurdginama, subject to his producing the original registration certificate and permit and further on satisfying the following conditions:

(i) That, instead of the petitioner, the registered owner shall furnish a personal bond in the sum of Rs. 10,00,000/-(Rupees Ten lacs only) with two sureties of Rs. 5,00,000/-(Rupees Five lacs only) each to the satisfaction of the Trial Court on undertaking to produce the truck in the Court as and when required;

(ii) That the petitioner shall get the truck photographed showing the registration number as well as the chassis number. Such photograph shall be taken in the presence of the Investigating Officer, to be kept on the file of the case.

(iii) That the personal bond of the registered owner and bonds of sureties shall carry the photographs of the owner and his sureties and the bond of sureties shall further carry the photographs of persons identifying them before the Court which would be with full residential proofs of the sureties and the persons identifying them.

(iv) The registered owner shall undertake not to transfer the ownership of the truck and not to lease it to any one and not to make or allow any changes in it to be made so as to make identifiable.

(v) The registered owner will not allow the truck to be used for any anti-social activities including for the purpose of carrying narcotics which may constitute offender under the NDPS Act.

(vi) In the event of confiscation order by the Court competent, the registered owner either shall keep the vehicle present positively for confiscation or shall deposit the face value of the vehicle on the date of releasing the vehicle by the Court.

In view of above, the revision petition stands allowed. A copy of this order may be forwarded to the concerned Trial Court for necessary compliance.