

(2020) 12 CHH CK 0013

Chhattisgarh High Court**Case No:** Criminal Misc. Petition No. 1374 Of 2020

Tikeshwar Singh

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Dec. 11, 2020**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 360, 451, 457, 457(1), 482
- Narcotic Drugs And Psychotropic Substances Act, 1985 - Section 20(b), 32A, 33, 36C, 51, 60, 60(3), 63
- Indian Forest Act, 1927 - Section 52C

Hon'ble Judges: Sanjay K. Agrawal, J**Bench:** Single Bench**Advocate:** Pankaj Singh, Ravi Kumar Bhagat**Final Decision:** Allowed

Judgement

Sanjay K. Agrawal, J

1. This petition under Section 482 of the CrPC is directed against the order dated 15-10-2020 passed by the learned Special Judge (NDPS), Korba in

Criminal MJC No.1245/2020 by which the petitioner's application under Section 457 of the CrPC for grant of interim custody of the vehicle seized

for commission of offence punishable under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act'),

has been rejected finding no merit.

2. The petitioner is registered owner of motorcycle namely, Bajaj Pulsar 180 DTS bearing registration No.CG-28/AT-0901, which was found involved

in the commission of offence punishable under Section 20(b) of the NDPS Act. He filed an application under Section 457 of the CrPC for interim

custody of the aforesaid vehicle, which has been rejected holding that since the vehicle in question is liable to be confiscated under Section 60 of the

NDPS Act, therefore, it cannot be directed to be released on interim custody.

3. Mr. Pankaj Singh, learned counsel appearing for the petitioner, would submit that though the vehicle seized is liable to be confiscated under Section

60 of the NDPS Act, yet, by virtue of Section 36-C of the NDPS Act as well as by virtue of Section 51 of the NDPS Act, the provisions contained in

Section 451 or 457(1) of the CrPC would be applicable as none of the provisions of the NDPS Act are inconsistent with the provisions of the CrPC

and therefore in a deserving case, the right to interim custody provided under Section 451 or 457(1) of the CrPC cannot be denied and if the vehicle is

allowed to remain in police station till the trial is concluded, it will go waste and it will be contrary to the decision of the Supreme Court in the matter of

Sunderbhai Ambalal Desai v. State of Gujarat (2002) 10 SCC 283.

4. On the other hand, Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate appearing for the respondent/State, would submit that in view

of the provisions contained in Section 60 of the NDPS Act, the vehicle in question is not liable to be released in favour of petitioner.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with

utmost circumspection.

6. Section 60 of the NDPS Act provides for confiscation of vehicle seized in commission of the offence punishable under the provisions of the NDPS

Act, which states as under: -

â€œ60. 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.

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 sub-section (1) and there 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.

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.â€

7. The aforesaid provision does not provide for confiscation of any vehicle immediately after its seizure. Confiscation is a separate procedure

unconnected with conviction, acquittal or discharge of the accused. It is only satisfaction of the court, trying an offence under the Act, to decide as to

whether the vehicle is liable to be confiscated or not. A detailed procedure for making confiscation under Section 60 of the NDPS

Act has been provided in Section 63 of the NDPS Act which provides as under: -

â€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 article 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 sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.â€

8. As such, by virtue ofâ€ Section 60 ofâ€ the NDPS Act, any conveyance used for commission of offence is liable to confiscation in accordance

with Section 63 of the NDPS Act after hearing the person who may claim any right thereto and considering the evidence, if any, which he may

produce in support of the claim and confiscation order can be made only at the end of the trial. Neither of the said provisions (Section 60 and 63 of the

NDPS Act) contained in the Act empowers the trial Court to make an order for proper custody of such a conveyance pending trial.

9. At this stage, it would be appropriate to notice Section 51 of the NDPS Act which provides as under: -

â€œ51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.-The provisions of the Code of

Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and

arrests, searches and seizures made under this Act.â€

10. By virtue of Section 51 of the NDPS Act, the provisions of the Code of Criminal Procedure, 1973 have been made applicable in so far as they are

not inconsistent with the provisions of the Act, to all warrants issued and arrests, searches and seizures made under the Act. Since the provision

contained in Section 451 of the CrPC providing provision for interim custody in so far as it relates to passing of order for proper custody of

conveyance pending conclusion of trial, is not inconsistent with any of the provisions including Sections 60(3) and 63 of the NDPS Act, in appropriate

cases order for release of conveyance used for carrying narcotic drugs pending conclusion of trial can be made under Section 451 of the CrPC. (See

B.S. Rawant v. Shaikh Abdul Karim and another 1989 CrLJ 1998.)

11. However, by Amendment Act No.2 of 1989, the NDPS Act was amended and Section 36-C was inserted in the Act making the provisions of the CrPC applicable to the proceedings before the Special Court. Section 36-C of the NDPS Act states as under: -

“36-C. Application of Code to proceedings before Special Court” Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.”

12. By virtue of Section 36-C of the NDPS Act, “Save as otherwise provided in this Act”, the provisions of the CrPC have been made applicable to the Special Court constituted under the provisions of the NDPS Act by Amendment Act No.2 of 1989 with effect from 29-5-1989. “Save as otherwise provided in this Act” employed in Section 36-C of the NDPS Act, is indicative of / reflection of the word “exception” intended to exclude some provisions of the CrPC like Section 360 CrPC etc., which have been expressly excluded by the NDPS Act by Sections 32A and 33 of the NDPS Act. As such, the above stated phrase has qualified the operation of the CrPC in the proceedings before the Special Court to the extent provided in the NDPS Act. Once the CrPC has been made applicable, the provisions of the CrPC contained in Sections 451 and / or 457 of the CrPC would automatically be attracted. As such, with effect from 29-5-1989, the CrPC as a whole, subject to the exception carved out as noticed herein-above, has been made applicable to the proceeding before the Special Court (NDPS) and therefore application under Section 451 or 457 of the CrPC for interim custody of the vehicle seized in commission of offence punishable under the NDPS Act would be maintainable and the Special Judge (NDPS) is empowered to consider the application under Section 451/457 of the CrPC on merit.

13. In Principles of Statutory Interpretation by Justice G.P. Singh, it has been held that the bar of jurisdiction has to be strictly construed and unless it

is expressly barred, bar cannot be inferred or implied and this principle is also applicable to criminal court.

14. In the matter of Rajasthan State Road Transport Corporation and others v. Mohar Singh (2008) 5 SCC 54,2 their Lordships of the Supreme Court

relying upon the above-stated celebrated text (Principles of Statutory Interpretation by Justice G.P. Singh), held as under: -

“21. We may in this behalf profitably notice the following excerpts from Principles of Statutory Interpretation (11th Edn.) by Justice G.P. Singh:

“It is a principle by no means to be whittled down' and has been referred to as a 'fundamental rule'. As a necessary corollary of this rule

provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly

construed. The existence of jurisdiction in civil courts to decide questions of civil nature being the general rule and exclusion being an exception, the

burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such a contention. The rule that the exclusion of

jurisdiction of civil court is not to be readily inferred is based on the theory that civil courts are courts of general jurisdiction and the people have a

right, unless expressly or impliedly debarred to insist for free access to the courts of general jurisdiction of the State. Indeed, the principle is not limited

to civil courts alone, but applies to all courts of general jurisdiction including criminal courts. The rule as stated above relating to strict construction of

provisions excluding jurisdiction of courts of general jurisdiction was recently expressly approved by the Supreme Court.

15. Since the provisions of the CrPC including Section 451/457 have been expressly made applicable by virtue of Section 36-C of the NDPS Act to

the proceedings before the Special Court (NDPS) and there is no express bar contained in the NDPS Act for grant of interim custody as contained in

Section 52C of the Indian Forest Act, 1927, as amended by the M.P. Amendment Act, 1983, therefore, merely on the ground that the vehicle is liable

to confiscation under Section 60 of the NDPS Act, it cannot be held that once the vehicle is seized for commission of offence under the NDPS Act,

interim custody cannot be granted, as jurisdiction of criminal court has to be construed strictly unless expressly excluded.

16. The Supreme Court in *Sunderbhai Ambalal Desai (supra)* has laid down parameters for considering the application for interim custody

expeditiously and judiciously so that the owner of the article would not suffer because of its remaining unused or by its misappropriation and court or

the police would not be required to keep the vehicle in safe custody. It was observed as under:-

7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the vehicle in safe custody;

3. if the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the

Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the

articles.

17. In view of the above, the finding of the learned Special Judge that since the vehicle is liable to be confiscated, interim custody under Section

451/457 of the CrPC cannot be granted, is liable to be set aside and accordingly, the impugned order passed by the learned Special Judge (NDPS),

Korba is hereby set aside. Since it is the case of the petitioner that he is the registered owner of the vehicle in question and it was being used in the

commission of offence and he is said to have given the said vehicle to the accused for his lawful purpose, but the accused has used it for the

commission of alleged offence, the petitioner is entitled for interim custody of the vehicle. The matter is remitted to the Special Judge (NDPS) to pass

order on the interim custody of the vehicle to the petitioner within 10 days from the date of production of certified copy of this order as per the

decisions of the Supreme Court in *Sunderbhai Ambalal Desai (supra)* and in the matter of *Ashok Kumar v. State of Bihar and others* (2001) 9 SCC

718 . The Special Judge may impose certain reasonable conditions for the ultimate production of the vehicle in question during trial.

18. The petition is allowed to the extent indicated herein-above.