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(2018) 07 CHH CK 0350

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 144 Of 2018

Pankaj Rai

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** July 30, 2018

**Acts Referred:**

- Narcotic Drugs And Psychotropic Substances Act, 1985 - Section 20(b)(ii)(c), 60(3)
- Code Of Criminal Procedure, 1973 - Section 452

**Hon'ble Judges:** Goutam Bhaduri, J

**Bench:** Single Bench

**Advocate:** Sunil Sahu, Astha Shukla

**Final Decision:** Allowed

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**Judgement**

Goutam Bhaduri, J

1. The present appeal is against the order dated 29.03.2017 passed by the learned Special Judge, N.D.P.S. Act, Mahasamund in Special Criminal

Case No.H-27/2016, whereby the vehicle alleged to be used in the offence has been ordered to be confiscated.

2. Brief facts of the case are that on 01.09.2016 when the vehicle bearing registration number MH-31 CR 7015 was intercepted and it was searched,

40.120 KG of cannabis was recovered, thereafter, after the investigation, charge-sheet was filed under Section 20 (b) (ii) (c) of The Narcotic Drugs

and Psychotropic Substances Act, 1985. After the entire trial, the appellant Pankaj Rai was acquitted of the charges by order dated 29.03.2017. The

Court in the said order had further directed for confiscation of the vehicle wherein the alleged cannabis was transported.

3. Learned counsel for the appellant submits that the acquittal order having been passed in favour of the appellant and as per the prosecution, the vehicle was seized from the possession of the present appellant and since the conviction has not been affected, therefore, he is entitled to get back his vehicle as without any rhyme or reason the order for confiscation cannot be passed.

4. Learned State counsel opposes the prayer.

5. Perused the order dated 29.03.2017. Reading of the order would show that the trial Court acquitted the accused/appellant on the ground that the prosecution was not able to prove the fact that the goods so seized were cannabis. The order further ordered for confiscation of the vehicle despite the acquittal of the appellant.

6. Section 60 sub-section (3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads that any animal or conveyance used in carrying any narcotic drug or psychotropic substance shall be liable for confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge of the owner. In the instant case, the seizure of the vehicle was made by Ex. P-16 from the joint possession of the appellant and the other co-accused. The document which is filed as Annexure A-1 shows that the said vehicle was registered in the name of Pankaj Rai i.e. the present appellant. The trial Court in the instant case further recorded the fact that the goods which were seized were not proved to be cannabis. Therefore, the prosecution has failed to prove beyond the reasonable doubt that the goods so seized were cannabis.

7. Section 452 of Cr.P.C. reads as under:-

452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof,

without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision. (3) A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section

(2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed

of. (5) In this section, the term ""property"" includes, in the case of property regarding which an offence appears to have been committed, not only such

property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been

converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

8. In the instant case, it appears that the vehicle was seized from the appellant and the other co-accused as per Annexure A-1, the vehicle prima facie

appears to be in the name of the appellant. Once having been found that the goods which were seized were not cannabis, the entire charges under the

NDPS Act automatically diluted and the parties are relegated back to their original position of innocence. When the court has come to finding that the

prosecution has failed to prove that goods which were seized were narcotic drug or psychotropic substance then provisions of Section 60 sub- section

(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 would not be applicable as the very sub stratum of applicability of Section 60 sub-

section (3) has been taken away by the acquittal order.

9. Consequently, order of confiscation passed by the learned court below by its order dated 29/03/2017 is liable to be set aside. Appellant is entitled to

get back possession of the vehicle provided if he proves his ownership in respect of the vehicle. If the appellant so advised may file necessary

application before the trial court and in such case, trial court after satisfaction of the proof that the appellant is the owner may proceed in the matter

by imposing necessary condition and possession of the vehicle may be handed over to the appellant.