
(2002) 11 P&H CK 0043

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Misc No. 40186-M of 2002

Jagmohan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Nov. 23, 2002

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 60, 61, 62, 63

Citation: (2003) 86 ECC 139

Hon'ble Judges: R.C. Kathuria, J

Bench: Single Bench

Advocate: R.S. Athwal, for the Appellant; Inderjit Singh Gehlot, Assistant A.G., for the Respondent

Judgement

R.C. Kathuria, J.

Jagmohan Singh, petitioner, seeks quashing of the order dated 15.6.2002 passed by the Special Judge, Ludhiana in case FIR No. 68 dated 15.3.2002 registered under Sections 15 and 61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") with Police Station Simla Puri, Ludhiana.

2. The petitioner is owner of tempo traveller bearing registration No. PB-01-2166 which was taken into possession by the Police in the above-mentioned case as 25 bags of poppy husk of 40 kgs. each were recovered from the said vehicle in the possession of Jaspal Singh and others. The petitioner, who is registered owner of the vehicle in question applied to the Court for release of the vehicle on Spurdari to the original owner. The Police in its reports stated that it has no objection to the vehicle being released on Spurdari in favour of the original owner. Despite this report, the Special Judge, Ludhiana took notice of the recovery of huge quantity of poppy husk and concluded that there was apprehension that this vehicle would be again used for smuggling of poppy husk and further there being apprehension of tampering of

the vehicle, the prayer for release of the vehicle was declined.

3. I heard counsel for the petitioner and the State counsel at length.

4. There is no factual dispute between the parties. The learned counsel representing the petitioner-accused primarily urged before me that the prayer for release of the vehicle to the registered owner had been wrongly rejected merely on the basis of apprehension whereas factually there was no such record placed before the court on behalf of the prosecution. It has not been disputed by the State counsel that the Police had not even taken any objection to the release of the vehicle in question to the original owner. The question for release of the vehicle involved in relation to offence under the Act had come up for consideration in *Gurdev Singh v. State of Punjab* 2002 (4) RCR (Cr.) 548. It was observed in para 6 of the judgment as under:

"Notice has to be taken of the provisions of Section 51 of the Act which expressly provides that the provisions of Code of Criminal Procedure, 1973 shall apply, 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 this Act. The above quoted provisions of Section 60(3) of the Act clearly lay emphasis on the liability for confiscation of conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under Sub-section (1) or Sub-section (2) but at the same time provides that the liability can be avoided where the owner of the conveyance is able to prove that it was used without his knowledge or connivance or by his agent. Understandably, at this stage the Court would require the evidence to be led unless the State admits the stand of the person applying under these provisions. Section 63 of the Act also pointedly makes reference to the situation where any article or thing seized under the Act is liable to confiscation u/s 60 or 61 or 62 of the Act but the person committing the offence stated therein is not known or cannot be found. In such situation, the Court has to hold an inquiry to decide such liability before ordering confiscation. That being the position, the resort to Section 451 of the Code which deals with the passing of the order for custody of the conveyance during the trial cannot be construed as violating the provisions of Sections 60(3) and 63 of the Act.

5. The stage for violation of the provisions of Sections 60(3) and 63 of the Act as such has not arisen so far. The trial Judge, under the circumstances, was not justified in declining the prayer of the petitioner. Needless to say that if the vehicle is allowed to be kept in Police Station, there is every likelihood of its getting being damaged and rendered unusable because of its non-use.

6. Under the circumstance of the case, the trial Special Judge was not justified in declining the prayer of the petitioner. Consequently, the impugned order is set aside and the vehicle in question is ordered to be released on Spurdari to the petitioner on being produced valid registration certificate as an interim measure on his furnishing personal bond and surety bond to the satisfaction of the Special Judge

concerned undertaking therein to produce the vehicle in question as and when required by the Police or the Court during the trial of the case and not to transfer the vehicle by the means during the period it remains on Spurdari with him. This order shall be subject to the final order passed by the trial Special Judge on conclusion of the trial.

The petition is disposed of accordingly.