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**Court No. - 77****Case :-** CRIMINAL REVISION No. - 3607 of 2021**Revisionist :-** Rajdhari Yadav**Opposite Party :-** State of U.P. and Another**Counsel for Revisionist :-** Lal Chandra Mishra,**Counsel for Opposite Party :-** Ashish Pandey, AGA**Hon'ble Mrs. Sadhna Rani (Thakur),J.**

The present criminal revision has been preferred by the revisionist Rajdhari Yadav against the order dated 29.10.2021 passed by the Special Judge N.D.P.S. Act/ Additional Session Judge, Court No.6, Allahabad in Misc. Case No.381 of 2021, arising out of Case Crime No.19 of 2021, under Sections 8/20/27A/ 29 N.D.P.S. Act, Police Station Lucknow NCB, District Prayagraj whereby the application of the revisionist for release of Tata Mini Truck No.GJ 16 AU 9781 was rejected.

It is argued by the learned counsel for the revisionist that the Tata Mini Truck No. GJ 16 AU 9781 of the revisionist was being repaired by the mechanic near Naribari Police Chowki. The STF force detained his driver, helper and vehicle from there on 27.05.2021 at about 3:00 PM. Nothing was recovered from the truck of the revisionist. The recovery was made from the Eicher Mini Truck but the police let that vehicle go after getting huge amount and illegally implicated his truck by taking his truck to Police Station Shankargarh, at a distance of 50 km from the Naribari Police Chowki. From the spot nothing is shown to be recovered from his truck. After planting the alleged ganja the arresting officer badly damaged the mangoes loaded upon his vehicle and looted the cash of Rs. 25,000/- from the driver and challaned the driver and helper in the present case. He is not named in the complaint. He has neither committed any offence nor has any concern with the aforesaid case. He is wrongly and illegally being implicated in the present case on the basis of the fake

recovery. The Special Judge N.D.P.S. Act/ Additional Session Judge, Court No.6, Allahabad has not exercised the jurisdiction vested in him according to the provisions of law. The impugned order is totally against the provisions of law, hence, the revision be allowed and the impugned order rejecting the release application of his vehicle No. GJ 16 AU 9781 be quashed.

Learned counsel for the revisionist has drawn the attention of the Court towards the judgment passed in ***Criminal Revision No.1926 of 2018, Dhirendra Singh Thapa Vs. State of U.P. and another*** and has argued that in that case the Court allowed the revision, impugned order was set aside, and release application was allowed, hence, on the basis of the said judgment the impugned order is prayed to be set aside.

Counter affidavit has been filed by the opposite party no.2- NCB wherein it is narrated that the specific information with regard to the transportation of huge quantity of 'ganja', by the nominated accused persons, by the vehicle of the revisionist was received in their office at Lucknow. A team constituted to conduct search and seizure. The team so constituted intercepted the vehicle in question and nominated accused persons and recovered 975:00 kg ganja from the vehicle of revisionist. During search and seizure the officers of NCB complied with all the mandatory provisions of NDPS Act. Memo of recovery was prepared on spot and was signed by accused persons, who were present at the time of recovery. On the national highway due to heavy traffic and security reasons it was not possible to unload mango cartons and bags of ganja. So the intercepted vehicles and the persons were taken to the Police Station Shankargarh for the proceedings of search and seizure and there is no illegality in the same. After recovery of 975:00 kg. ganja from the vehicle of the revisionist, Ganja and vehicle were seized under the N.D.P.S. Act and were deposited in malkhana of concerned police station by the order of concerned court.

The statement of accused persons were recorded. Several notices

were sent to the revisionist as he was found the owner of the vehicle in question, but despite the service of notices, the revisionist did not appear before the investigating officer and, accordingly, the investigation with regard to the revisionist is kept open and is still pending. The court below has rightly rejected the vehicle release application of the revisionist as the vehicle was being used for the transportation of narcotic substance and was seized under Section 60 of N.D.P.S. Act. The impugned rejection order is a detailed and reasoned order, which was passed after considering the relevant provisions of N.D.P.S. Act and the material available on record.

The judgment *Sunderbhai Ambalal Desai Vs. State of Gujrat, (2002)10 SCC 283* does not apply on the facts of the present case as the N.D.P.S. Act is a self contained Act and Section 8(C) of the Act prohibits the transportation of any narcotic drugs or psychotropic substances except for medical or scientific purposes, with the terms and condition of license permit or authorization. As the truck in question has been seized under Section 60 of NDPS Act which was being used by the accused persons for transportation of recovered ganja, without any authorization and the driver of the revisionist was present at the time of seizure, who had admitted his involvement in the trafficking of ganja. As per Section 63 of NDPS Act the seized ganja and the conveyance are liable to be confiscated. N.D.P.S. Act being a special Act has over riding effect on the provisions of Cr.P.C. Section 451 of Cr.P.C. does not apply in the case of N.D.P.S. Act. Such a huge quantity of recovered ganja cannot be planted. There is nothing on record to establish any type of enmity between the accused persons and the officers of NCB.

On the basis of judgments *Union of India Vs. Mohanlal and another (2016) 3 SCC 379, State of Madhya Pradesh Vs. Udai Singh Criminal Appeal No.524 of 2019, Bhupendra Pathak Vs. State of U.P. and another* passed by this Court in *Criminal Revision No. 4509 of 2018, and Shajahan Vs. Inspector of Excise and others, 2019 SCC Online*

**Kerala 3685**, the prayer is made to dismiss the present revision.

Heard learned counsel for the revisionist and learned A.G.A. Perused the record.

Learned counsel for the opposite party no.2- N.C.B. is not present.

There is no dispute that the revisionist is the owner of the vehicle in question having all the documents with regard to his vehicle. The only question involved is whether the trial court had jurisdiction to release the truck in question?

As per the facts of the case, the NCB team had intercepted the truck and the alleged recovery of 975 kg. ganja is shown from the vehicle of the revisionist. It is true that in recovery memo at some places the word Eicher Mini Truck has been used in place of Tata Mini Truck, but the revisionist cannot take benefit of this bonafide mistake of the scribe of the recovery memo, as in the recovery memo the number of the vehicle has been clearly mentioned as GJ 16 AU 9781 with the name of owner Rajdhari Yadav and as per revisionist Rajdhari Yadav, he is the owner of the Tata Mini truck No. GJ 16 AU 9781. From the information received from the R.T.O. office also, intercepted Tata Mini Truck No. GJ 16 AU 9781 has been found registered in the name of the revisionist, Rajdhari Yadav.

Admittedly, the vehicle in question is seized the provisions of the NDPS Act. To ascertain the role of the vehicle owner various notices are alleged to have been sent by the NCB, but as per the version of NCB the revisionist refrained himself from attending the office of NCB. Though, the revisionist denies the fact that he had received any notice from NCB, but it is an admitted fact that the revisionist did not attend the office of NCB and due to non appearance of the revisionist the confiscation proceedings regarding the aforesaid Tata Mini Truck could not be started and the investigation is still in progress.

It is claimed by the revisionist that his vehicle be released as per

provisions of Cr.P.C. (Sections 451 and 457) in light of judgment ***Sunderbhai Ambalal Desai (supra)***. The revisionist has also claimed benefit of judgment ***Dhirendra Singh Thapa (supra)*** passed by this Court.

If we go through the general provisions in this regard, in the Cr.P.C. the seized vehicle can be released as per Sections 451 and 457 of Cr.P.C. but here in the case in hand the vehicle has been seized under the provisions of NDPS Act and NDPS Act admittedly is a special act which prescribes a procedure for dealing in specified case and NDPS Act being a special statute, the provisions of special statute has to be followed by the Court. Section 63 of the NDPS Act provides a procedure for making confiscation. Admittedly the vehicle in question has not been confiscated yet. Section 52-A of NDPS Act provides for the seizure and disposal of seized narcotic drug psychotropic substances and the conveyances. Before the amendment of Section 52-A of the Act in 1989 the word 'Conveyance' was not included as item which could be disposed of under Section 52-A of NDPS Act. As per the learned A.G.A. the very fact that word 'Conveyance' had been incorporated, the amendment itself indicates that the Government intended to provide a special procedure to deal with the disposal of such conveyances. While taking into account the fact that most of the transportation are done in conveyance which itself is defined under Section 2 (viii) as meaning "a conveyance of any description whatsoever and includes any aircraft, vehicle or vessel". Therefore, if any, vehicle is involved in transportation of narcotic drug, psychotropic substance or controlled substance, such vehicle also could be seized and disposed of in terms of Section 52 A(1) of the Act.

It is held by ***Kerala High Court in Shajahan Vs. Inspector of Excise and others (supra)*** that because the special statute has been amended giving the power of disposal of narcotic drugs, psychotropic substances, controlled substances or conveyance to special officer, he will have power to act in accordance with the procedure prescribed under the

Act or the rules framed thereunder.

In judgment *Union of India Vs. Mohanlal and another (supra)*, the Apex Court hold that when any narcotic drug, psychotropic and controlled substances and conveyances are seized, the same shall be forwarded to the officer in-charge nearest to the police station, who shall approach the magistrate concerned and with his permission the sampling shall be done under the supervision of the magistrate. Further, it is directed by the Apex Court that Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive **storage** of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. The Central Government and the State Governments shall also designate an officer each for their respective **storage** facility and provide for other steps, measures.

The question to be decided in this revision is that in view of the amended provisions of Section 52A of the NDPS Act and the notification dated 16.01.2015, whether the learned magistrate/ special court has the authority under the provisions of Sections 451 and 457 Cr.P.C., or Drug Disposal Committee is to release the vehicle to consider the application for interim custody of the vehicle/conveyance.

The same questions were decided by the Division Bench of the **Karnataka High Court At Bengaluru on 17.05.2022 in Criminal Petition No.3571/2021 Rathnamma Vs. State** represented by PSI Channagiri Police Station Davanagere, State Public Prosecutor High Court of Karnataka, Bengaluru and accompanied petitions in a reference made to that Court.

As per Division Bench of Karnataka, High Court at Bengaluru provisions of Section 451 of Cr.P.C. are not inconsistent with the provisions of NDPS Act, paragraph-47 of the judgment reads as follows:-

*“47. In the peculiar facts and circumstances of the present case, we are of the considered opinion, that we have no hesitation in holding that there is no provision*

*under the NDPS Act debarring release of the vehicle for interim custody. The provisions of Section 451 of Cr.P.C., as already stated supra, is found not inconsistent with the provisions of the NDPS Act and is applicable to the vehicle seized under the NDPS Act as well. Thereby, the law laid down by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai's case stated supra will apply to the vehicles seized under the NDPS Act as well. Any contrary view taken by the Courts of law would be against the interest of the owner of the vehicles, the public at large and the State."*

In paragraph-50 of the same judgment the Division Bench held that:-

*"50. Since the provisions of the Code of Criminal Procedure including Section 451/457 have been expressly made applicable by virtue of Sections 36-C and 51 of the NDPS Act to the proceedings before the Special Court 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, 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."*

Regarding Standing Order No.1/ 1989 and notification dated 16.01.2015, the Apex Court in judgment **Union of India Vs. Mohanlal and another (supra)** held that the earlier Notification/ Standing Order No.1 of 1989 shall be treated to be superseded to the extent the subsequent notification dated 16.01.2015 prescribes a different procedure.

In order to avoid any confusion arising out of the continued presence of two notifications on the same subject it was made clear by the Division Bench of Karnataka High Court that disposal of narcotic drugs and psychotropic and controlled substances and conveyances shall be carried out in the manner prescribed, till such time the Government prescribed a different procedure for the same.

Admittedly, in the present case also, the respondents have not produced any procedure prescribed by the Central Government as directed by the Hon'ble Supreme Court in **Union of India Vs. Mohanlal and another (supra)**.

Regarding applicability of the provisions of Cr.P.C., in this regard the Division Bench of Karnataka High Court in its judgment in paragraph-55 held that:-

*"55. In view of the above, there is no expression to release the interim custody of the*

vehicle or exclude the provisions of the Code of Criminal Procedure in view of the Section 36-C of the NDPS Act. It is also relevant to consider, at this stage, that either in the Notification dated 16.01.2015 or the amended provisions of Section 52-A of the NDPS Act, no mechanism is provided for consideration of application for grant of interim custody of the vehicle."

In paragraph- 56 of the judgment the Division Bench held as follows:-

"56. The entire object of the Notification is to either dispose or destroy the drugs. Clause 9(1), (2), (4), (5)(a)(c)(d) of the Notification concerns with **Disposal**, while Clause 9(5)(b), (6), (7) concerns with **Destruction**. The only clause which has relevance to conveyances is Clause 9(5)(e) which depicts that seized conveyances shall be sold off by way of tender or auction as determined by the Drug Disposal Committee. The said Clause does not concern to interim custody and it only concerns with Disposal which is akin to Section 452 of the Cr.P.C. Needless to emphasize that this sale is post-trial. Thereby the Notification, dated 16.01.2015 or the provisions of Section 52A of the NDPS Act does not deal with the interim custody of the seized Articles or Conveyances. The Legislature has intentionally not used the word "Custody" under Section 52A of the NDPS Act, as can be seen under Sections 451 and 457 of the Code of Criminal Procedure. Therefore, the power or jurisdiction cannot be conferred to authority/officer including the Drug Disposal Committee, who is not vested with the same by the Statute. The power under the Notification issued cannot go beyond the statutory provisions of Section 52A of the NDPS Act."

Lastly, the Division Bench of Karnataka High Court held that the judgments in **Shahjahan Vs. Inspector of Excise (supra)** and **Union of India Vs. Mohanlal and another (supra)**, there was no occasion to consider the application for release of the interim custody of the vehicle (conveyances) and in that view of the matter, the said judgments relied upon by the learned counsel for the respondents to the effect that Drug Disposal Committee has power and not the Magistrate or the Special Court under the NDPS Act have no application to the facts and circumstances of the present petitions.

A perusal of Section 36- C and 51 of the NDPS Act indicates that the provisions of Cr.P.C. so far as, they are not in contradictions with the special Act NDPS Act, shall be applicable to the NDPS Act and as in the NDPS Act no procedure for interim custody of the vehicle is prescribed Sections 451 and 457 of Cr.P.C. specifically deal with the custody and disposal of property pending trial and the procedure to be followed by the police upon seizure of property. Consequently the judgment **Sunderbhai Ambalal Desai (supra)** shall be applicable to the facts of the present case



and as in the judgment ***Union of India Vs. Mohanlal and another (supra)***, only the disposal of seized narcotic drug, psychotropic and controlled substances and conveyances were discussed and there was no occasion to consider the matter of release or the interim custody of the vehicle (conveyance).

So on the basis of above discussions, this Court is of the opinion that law laid down by the Apex Court in ***Sunderbhai Ambalal Desai (supra)*** will apply to the vehicle seized under the NDPS Act as well. Thus, the Magistrate/ Special Judge, NDPS Act shall have power to consider the application for the interim custody of the conveyance/ vehicle under the provision of Section 451 and 457 of Cr.P.C.

The finding of the trial court that the Drug Disposal Committee would dispose of the vehicles seized under NDPS Act is against the mandate of the Apex Court in ***Union of India Vs. Mohanlal and another (supra)***.

The revision is hereby **allowed**. The order dated 29.10.2021 passed by the Special Judge N.D.P.S. Act/ Additional Session Judge, Court No.6, Allahabad in Misc. Case No.381 of 2021, arising out of Case Crime No.19 of 2021, under Sections 8/20/27A/ 29 N.D.P.S. Act, Police Station Lucknow NCB, District Prayagraj is hereby set aside. The revisionist is directed to appear before the court concerned within a period of 15 days from today to get his application decided on the basis of law discussed above.

**Order Date :- 29.08.2022**

Radhika