

lady was expected to be having sexual intercourse with a person and the lady was thereby committing no offence does not appear to be a matter on which the police officer can be congratulated. Since a special police officer of position and responsibility has been appointed in the State of Punjab to carry out the purposes of the Act, I consider it necessary to put him on the guard by referring to the Madras case.

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For the reasons given above, this petition is accepted the conviction and sentence imposed on the petitioner are set aside and he is acquitted of both the charges levelled against him. He is directed to be set at liberty forthwith unless required in connection with some other case.

K.S.K.

REVISIONAL CRIMINAL

*Before R. S. Narula, J.*PIARA SINGH,—*Petitioner.**versus*THE STATE,—*Respondent.*

Criminal Revision No. 571 of 1965.

*Code of Criminal Procedure (V of 1898)—S. 516-A—Opium Act—S. 11—Opium found being transported in a truck seized—Order for return of truck—Whether can be made before the challan is filed.*

1965

July, 8th

*Held*, that it is only when an article, of the kind envisaged by section 516-A, Criminal Procedure Code, is produced before a Magistrate during the inquiry or trial of a case that the Magistrate has the jurisdiction to pass an order under that provision of law. Till then he has no jurisdiction to pass any order under section 516-A, Criminal Procedure Code, one way or the other.

*Petition under Section 439, Cr. P. C., for revision of the order of Shri P. N. Thakral, Sessions Judge, Sangrur, dated the 27th May, 1965, affirming that of Shri K. K. Sethi, Magistrate Ist Class, Sangrur, dated the 22nd April, 1965, rejecting the application and ordering the prosecution to submit the challan at the earliest.*

A. S. BAINS, ADVOCATE, for the Petitioner.

K. S. KWATRA, ASSISTANT ADVOCATE-GENERAL, for the Respondent.

## JUDGMENT

Narula, J.

NARULA, J.—The circumstances in which this revision petition has arisen are these. On or about 12th April, 1965, a large quantity of poppy husks contained in 105 bags was being carried in truck No. PNJ-9749, which was seized by the police. Gurnam Singh, driver of the truck and Ram Lubhaya, another person, who was in the truck, were challaned under section 9 of the Opium Act. The truck was seized under section 15 of that Act and it is argued before me that the truck was liable to be confiscated under section 11 of the Act. Of course it is admitted that even in case of passing an order under section 11, the magistrate concerned may give an option to the owner under section 12 of the Act to pay a fine in lieu of confiscation.

On an application by Piara Singh petitioner, the Duty Magistrate is stated to have passed an order on April 14, 1965, directing the handing over of the truck on garnishes basis on furnishing security in the sum of Rs. 25,000. Though the application was by Piara Singh owner, in the order passed it was stated that the truck may be returned to the accused on the above conditions. Gurnam Singh accused offered to take the truck in pursuance of the above order. When the mistake was detected by the prosecution, an application for review of the order of the Duty Magistrate was filed. This review application was accepted by the Judicial Magistrate on 20th April, 1965, in which order the relevant portion is in the following words:—

“The security bond which has been filed in compliance with this order has been drafted on the assumption that the truck be restored to Gurnam Singh and not to Piara Singh. This is obviously wrong. The truck cannot be handed over to the accused Gurnam Singh, because he has not asked for it and so my order, dated 14th April, 1965, has to be reviewed on account of this mistake.”

Piara Singh petitioner is then alleged to have made a petition for the truck being handed over to him on *Saoudari* basis. This application was rejected by the Judicial Magistrate First Class, Sangrur, by his order dated 22nd April, 1965. The order rejecting the application of the owner was justified by the learned Magistrate on

three grounds. It was first stated that the truck was liable to confiscation under section 11 of the Act in case the knowledge of the owner about the transport of the poppy husks was proved and that this matter could be decided only if the prosecution had led evidence. The second ground which found favour with the learned Magistrate was the allegation of the prosecution to the effect that the quantity of "BHUKI" was huge and the release of the truck might hamper the due prosecution of the case against the accused. The implication of this objection has not been understood by me. The third ground justifying rejection of the application was that the challan was likely to be filed within ten days as it was so stated by the investigating officer on 22nd April, 1965. The owner went up in revision to the Sessions Judge, Sangrur, Mr. P. N. Thukral, the learned Sessions Judge, rejected the revision petition by his brief order, dated 27th May, 1965, on the ground that the Magistrate had no jurisdiction to pass any order under section 516-A of the Code of Criminal Procedure on 22nd April, 1965, as no challan had been filed before that Magistrate till then. The ground on which the learned Sessions Judge proceeded does appear to be correct, but the order which he passed should, in the circumstances have been different. The moment the learned Sessions Judge found that the judicial Magistrate had no jurisdiction to pass an order under section 516-A, of the Code of Criminal Procedure on 22nd April, 1965, he should have accepted the revision petition and set aside the order of the Magistrate as being without jurisdiction and should have left the owner to pursue the matter in accordance with law. That would not have resulted in the return of the truck to the owner but would have left the field open. The result of the order of the learned Sessions Judge, dated 27th May, 1965, is that the order of the Magistrate, dated 22nd April, 1965, which has been held to be wholly without jurisdiction, has been upheld.

It has been argued by Mr. A. S. Bains, the learned counsel for the petitioner, that no notice has so far been given to him why the truck be not confiscated, that the main case under section 9 of the Opium Act has not yet reached an appreciable stage, and that the owner is being deprived of the truck, and is losing Rs. 100 per day and the truck has been acquired from Messrs Paragon Utility Financiers Limited by the petitioner on hire-purchase basis which is causing the petitioner an irreparable loss and

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irretrievable injury. He states that he is prepared to take the truck on any conditions which may be imposed for the restoration of the truck.

Mr. Kwatra, the learned counsel appearing for the State, however, contends that this Court cannot be asked to modify or reverse the order of the Magistrate, dated 22nd April, 1965, as the Magistrate could not on that day pass any legal order under section 516-A of the Code of Criminal Procedure. The objection of the State counsel appears to be sound. It is only when an article of the kind envisaged by section 516-A, Criminal Procedure Code, is produced before a Magistrate during the inquiry or trial of a case that the Magistrate has jurisdiction to pass an order under that provision of law. Till then he has no jurisdiction to pass any order under section 516-A, Criminal Procedure Code, one way or the other. The learned Magistrate could, therefore, dismiss the application as not maintainable, but could not enter into the controversy on merits.

At the same time it must be observed that there seems to be no sense in keeping this truck idle with the police without any advantage to any one and to the definite disadvantage of the owner. There is a provision for imposition of fine in lieu of confiscation under section 12 of the Act. Even when entrusting the truck on Sapurdari basis, suitable conditions can be imposed by the Magistrate to ensure that if the truck is lost or deteriorates the security bond for the full value of the truck may be liable to forfeiture.

The petitioner may now make an appropriate application to the Court in which the inquiry or trial of the case is pending. I have no doubt that if the application is supported by cogent evidence to show that the truck is on hire-purchase basis with the petitioner and he is suffering loss on account of being deprived of its possession and user, the learned Magistrate will exercise his judicial discretion under section 516-A of the Code of Criminal Procedure in a proper way and may direct the return of the truck to the petitioner if he thinks such an order to be fair and just in the circumstances of the case.

In the above circumstances the petition fails on the above-mentioned technical ground and is, therefore, dismissed.

R.S.