
the police on 30th July, 1991 and were brought to the office of DSP, Barnala. The trial Court was justified in observing that these telegrams by way of defence only and do not contain any grain of truth therein. These telegrams do not even corroborate the testimony of Satpal singh (DW 1) and Beant Singh (DW 2). So, the testimony of the two witnesses examined in defence and the three telegrams have been rightly rejected as being incredible and unreliable.

(22) Lastly, the learned causal for the appellants has argued that the sentence imposed upon the appellants is quite disproportionate to the facts and circumstances of the case. It has been pointed out by the learned counsel that the appellants are not previous convicts and do not have any past criminal history and they are only the bread earners in their respective families. Keeping in view the nature of the narcotic drug found in possession of the appellants and the aforesaid circumstances, we are of the view that a sentence of 10 years rigorous imprisonment, which is the minimum under the Act, would meet the ends of justice.

(23) As a result of the above discussion, this appeal succeeds in part. While upholding the conviction of the appellants under section 15 of the Act, the sentence of rigorous imprisonment imposed upon each of the two appellants is hereby reduced from 14 to 10 years. The sentence of fine with its default clause and the orders regarding confiscation of truck No. PBD-2159 are hereby maintained.

S.C.K.

Before M.L. Koul, J.

BIKKAR SINGH & OTHERS,—*Appellants*

versus

STATE OF PUNJAB,—*Respondent*

CrI. A. 392/SB of 1997

8th August, 1997

Code of Criminal Procedure, 1973—Ss. 452 read with S. 454 and 482—Confiscation of vehicle in which convict was caught carrying poppy husk—Trial Court cannot straight-away confiscate property in favour of State without enquiring into its ownership and establishing that the vehicle was used knowingly by owner for committing offence u/s 15 of N.D.P.S. Act—Order of confiscation

quashed and Trial Court directed to decide afresh after notice to the owner.

Held, that the trial Court has finally confiscated the property i.e. tractor No. PJD-3296 without knowing as to who was its owner; whether the property was stolen away by the accused-convict or it was abandoned and he managed to carry the poppy husk seized in the case, in it. No inquiry whatsoever has been conducted by the trial court in this regard and instead has finally confiscated the tractor bearing No. PJD 3296, in favour of the State. In this way he has fallen in legal error in confiscating the tractor in favour of the State, without knowing the fact as to who was its owner and whether the tractor was abandoned and nobody claimed it. Hence, the order passed by the learned trial Court *qua* the confiscation of the tractor being palpably wrong and against the provisions of Section 452 Cr.P.C. is hereby quashed. The learned trial Court is directed that he should dispose of the matter afresh in accordance with law within the purview of Section 452 Cr.P.C. after providing a chance to the appellants to show whether the tractor in question belongs to them and if so then can be in that situation confiscate it in favour of the State.

(Para 7 & 8)

K.S. Dadwal, Advocate, *for the appellants.*

P.S. Sullar, AAG, Punjab, *for the respondent.*

JUDGMENT

(1) This appeal owes its origin to the order of conviction and sentence, passed by the Addl. Sessions Judge, Hoshiarpur, whereby one Paramjit Singh was convicted for an offence under Section 15 of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. One Lakh, for keeping in his possession 37 Kgs. of poppy husk, which was being carried in Tractor No. PJD-3296. The said Paramjit Singh has already preferred an appeal against the order of conviction and sentence, which stands admitted by this Court. The appellants who claim to be the owners of the tractor in question have preferred this appeal against the part of the said order whereby the trial court while parting with the case has observed that "the tractor No. PJD-3296 which was knowingly used as a mode of conveyance by the accused also stands confiscated to the State".

(2) Aggrieved by the said order, the present appeal has been preferred by the appellants while invoking the provisions of Section 452 read with Section 454 of the Code of Criminal Procedure, submitting that the learned trial court has not at all taken care of the provisions of Section 452 and did not conduct an inquiry as

was required within the ambit of said provisions of the Cr. P.C. and without establishing as to who were the owners of the tractor, ordered its confiscation.

(3) According to the appellants they have all the documents in their possession to show that they are the owners of the tractor No. PJD-3296 and as no opportunity was provided to them to prove their ownership in the court, therefore, there is no alternative except to prefer this appeal in this Court.

(4) On thoughtful consideration, it is found desirable to relate relevant provisions of Section 452 Cr.P.C. in verbatim 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 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.

(5) From the very language of clause 1 of Section 452 of the Code of Criminal Procedure, it becomes manifestly clear that any criminal court on the conclusion of inquiry or trial is empowered to make any order with regard to the disposal of any property or document produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence either by destruction, confiscation or delivery to any person claiming to be entitled to the possession thereof, or otherwise. The delivery of such property within the ambit of clause 2 of the said section can be made 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.

(6) It indicates that the trial court can not finally deliver the property to any person claiming to be entitled to such property but can deliver it to that person on satisfaction on execution of a bond with or without sureties with a direction that such property be produced in the Court if the order made under sub-section (1) of Section 452 Cr.P.C. is modified or set aside in appeal or revision.

(7) In the instant case the trial Court has finally confiscated the property i.e. tractor No. PJD-3296 without knowing as to who was its owner; whether the property was stolen away by the accused-convict or it was abandoned and he managed to carry the poppy husk seized in the case, in it. No inquiry whatsoever has been conducted by the trial court in this regard and instead has finally confiscated the tractor bearing No. PJD 3296, in favour of the State. In this way he has fallen in legal error in confiscating the tractor in favour of the State, without knowing the fact as to who was its owner and whether the tractor was abandoned and no body claimed it.

(8) Hence, the order passed by the learned trial Court *qua* the confiscation of the tractor being palpably wrong and against the provisions of Section 452 Cr. P.C. is hereby quashed. The learned trial Court is directed that he should dispose of the matter afresh in accordance with law within the purview of Section 452 Cr.P.C. after providing a chance to the appellants to show whether the tractor in question belongs to them and if so then can he in that situation confiscate it in favour of the State. Hence, in the circumstances, the trial Court is directed to dispose of the matter within a period of one month from the date he receives the copy of the order, in accordance with law, as indicated above.

R.N.R.

Before G.S. Singhvi & M.L. Singhal, JJ.

KARNAIL SINGH,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondent*

CWP No. 3248 of 1997

7th October, 1997

Constitution of India, 1950—Art. 226—Compassionate appointment—Applicant minor son of deceased Government employee—Claim for compassionate appointment is based on