

Narender Kaur Vs. Arun Sheoran, I.O., Narcotics Control Bureau

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Court : Delhi

Decided On : Jul-19-2000

Reported in : 2000(56)DRJ553

Judge : J.B. Goel, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 451 and 482 Narcotic Drugs & Psychotropic Substance Act, 1985 - Sections 43 and 60

Appeal No. : Crl.M.(M) No. 1026/98

Appellant : Narender Kaur

Respondent : Arun Sheoran, I.O., Narcotics Control Bureau

Advocate for Pet/Ap. : Mr. R.D. Mehra, Adv

Judgement :

ORDER

J.B. Goel, J.

1. This petition under Section 482 of the Code of Criminal Procedure (for short 'the Code') challenges the legality and propriety of order dated 3.3.1998 passed by learned Addl. Session Judge whereby two applications, one filed by Smt. Narender Kaur (Present petitioner) for return of Maruti Car No.DL-SC 0657 and the other by Smt. Daya Kaur for return of the currency of Rs. 2,44,900/- and some

other articles which were seized by Narcotics Control Bureau (for short 'NCB') during investigation were dismissed. Only Smt. Narender Kaur has filed this petition.

2. Briefly, the facts are that on prior secret information received on 25.3.1997, the officers of NCB formed two surveillance teams, one was deputed near House No. B-7/1 Mianwali Nagar belonging to one Ved Prakash Manchanda (accused in the main case) where accused Amar Pal Singh along with his son Tarvinder Pal Singh reached in the aforesaid Maruti car, where said Manchanda had handed over to Amar Pal Singh a packet which later was found containing 940 gms. of Heroin. After receipt of this packet, Amar Pal Singh and his son in that car proceeded towards Peeragari Chowk, Rohtak Road, where the second party already deputed intercepted the car and on search recovered from the possession of Amar Pal Singh the aforesaid packet containing 940 gms. Heroin which was seized along with the car. Statements under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'the Act') of Amar Pal Singh and Tarvinder Singh were recorded. Amar Pal Singh made disclosure statement about his source of acquiring this Heroin as from Ved Prakash Manchanda for which he was to get commission. Later, on search at the house of accused Amar Pal Singh at C-89, Fateh Nagar, New Delhi, a small polythene packet containing 4 gms. of Heroin, one vacuum Sealer, a small diary, a small weighing scale, some documents, Rs.2,44,900/- in cash, US\$ 50 and some other articles were recovered which were seized after drawing panchnama in the presence of Smt. Narender Kaur w/o Amar Pal Singh. Amar Pal Singh and Ved Prakash Manchanda were arrested and they are being prosecuted under Section 21/29 of the Act.

3. Two applications both dated 10.2.1998 under Section 451 of the Code, one by Smt. Daya Kaur for return of cash amount of Rs. 2,44,900/-, UTI certificates and other documents including R/C of a motorcycle, and the other by Smt. Narender Kaur for return of the said maruti car along with its documents were filed. The learned Trial Court vide order dated 3.3.1998 rejected the application of Smt. Narender Kaur but the application of Smt. Daya Kaur was partly allowed in that, request for return of currency notes was rejected. The return of money was declined on the ground that Amar Pal Singh in his statement under Section 67 of

the Act had stated that this amount was the sale proceeds of the contraband made by him, whereas return of the car was declined on the ground that the car was being used for conveyance of the contraband and was liable to be confiscated under Section 60 of the Act.

4. No one appeared for arguments on behalf of the department on the date fixed for hearing or even thereafter.

5. I have heard learned counsel for the petitioner. He has contended that the petitioner is the registered owner of the car; the car is not liable to confiscation as its use, if any, for conveyance of the contraband by Amar Pal Singh accused was without her consent, knowledge or connivance; the car is lying in the open where it will become junk causing loss and injury to the petitioner as she is the owner of the vehicle; if given on superdari, it could be produced if ultimately it was held to be liable to confiscation and for that purpose adequate security could be required from the petitioner; the currency amount is also not liable to be confiscated; that interim custody could be given by the Court under Section 451 of the Code inasmuch as the provisions of this Code have not been excluded from applicability by the Act; that the learned lower Court has acted illegally and unreasonably in declining the request for return of car and currency amount. He has relied on B.S. Rawant v. Shaikh Abdul Karim & Anr. 1989 Cri.L.J. 1998 and Chander Bhan Vs . State .

6. Smt. Daya Kaur has not challenged the legality and propriety of the order. The petitioner had not claimed the money before the lower court. She thus is not an aggrieved person and the challenge against that order by her to that extent would not lie. Even otherwise, in view of the statement made by Amar Pal Singh under Section 67, it cannot be said that the learned session judge has acted illegally. This petition to that extent is disallowed.

7. The car in question has obviously been seized under Section 43 of the Act. Relevant sections 60 and 63 of the Act which provide for disposal, inter alia, of the conveyance used for the purpose of committing the offence, so far as relevant, provide as under:-

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) x x x x x x x (2) x x x x x x x (3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscations.-

(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether any article or thing seized under this Act is liable to confiscation under Section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the Court may inquire into and decide such liability and may order confiscation accordingly.

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing other than a narcotic drug, psychotropic substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the Court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

8. Under sub-section (3) of Section 60, the car used as conveyance of the contraband is liable to confiscation in case it belongs to the person found in possession of the contraband and otherwise unless its owner proves that it was so used without his knowledge or connivance or of his agent, if any, and the person-in-charge of the conveyance and they had taken all reasonable precautions against such use. The petitioner claims to be the owner of this car and has alleged that she had no knowledge nor she had connived in carrying the contraband.

9. In the application under Section 451 of the Code, it is alleged that the car would greatly diminish in value as the same has not been kept in any garage and is lying in the open, unattended to and exposed to the vagaries of weather. This statement does not seem to be correct inasmuch as the investigating officer in his report dated 25.3.1997, available on the record of the Trial Court, has stated that this car 'has been put in a garage, duly locked and sealed'. So, it cannot be said that the car is lying in the open to the vagaries of weather.

10. Now the question is whether the car in question used as a conveyance in commission of the offence is liable to be released or not under the Act or the Code, if applicable, in the circumstances. Learned counsel for the petitioner has contended that Section 451 of the Code applies as it has not been over-ridden by the Act.

11. It is well established that while interpreting the provisions of a statute the object of the Legislation has to be kept in view. The enormity of the drug abuse and great adverse effect on the society and the nation and great perils to which the country is thereby exposed, has been considered recently by the Constitution Bench of the Supreme Court in the case of *The State of Punjab Vs . Baldev Singh* : 1999 CriLJ3672 where the necessity of the legislation and the strictness with which this drug abuse is to be dealt with has been considered. In relevant paras 4 and 5, it has been observed as under:-

4. Drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomena and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions against Illicit Trafficking in Narcotic Drugs & Psychotropic Substances which was held in Vienna, Austria in 1988 was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified this convention.

5. Prior to the passing of the NDPS Act, 1985 control over Narcotic drugs was being generally exercised through certain Central enactments though some of the States also had enacted certain statutes with a view to deal with illicit traffic in drugs. The Opium Act, 1857 related mainly to preventing illicit cultivation of poppy, regulating cultivation of poppy and manufacture of opium. Opium Act, 1870, supplemented Opium Act, 1875 and made possession, transportation, import, export, sale, etc. of opium also an offence. The Dangerous Drug Act, 1980, was enacted with a view to suppress traffic in contraband and abuse of dangerous drugs, particularly derived from opium, Indian hemp and coca leaf etc. The Act prescribed maximum punishment of imprisonment for three years with or without fine, insofar as first offence is concerned and for the second or the subsequent offence the punishment could go up to four years RI. These Acts, however, failed to control illicit drug traffic and drug abuse on the other hand exhibited an upward trend. New drugs of addiction known as Psychotropic Substances also appeared on the scene posing serious problems. It was noticed that there was an absence of comprehensive law to enable effective control over psychotropic substances in the manner envisaged by the International Convention of Psychotropic Substances, 1971. The need for the enactment of some comprehensive legislation on Narcotics Drug and Psychotropic Substances was, therefore, felt. The Parliament with a view to meet a Social challenge of great dimensions, enacted

the NDPS Act, 1985 to consolidate and amend existing provisions relating to control over drug abuse etc, and to provide for enhanced penalties particularly for trafficking and various other offences. The NDPS Act, 1985 provides stringent penalties for various offences. Enhanced penalties are prescribed for second and subsequent offences. The NDPS Act 1985 was amended in 1988 w.e.f. 29th May, 1989. Minimum punishment of 10 years' imprisonment which may extend up to 20 years and a minimum fine of Rs. 1 lakh which may extend up to Rs. 2 lakh have been provided for most of the offences under the NDPS Act, 1985. For second and subsequent offences, minimum punishment of imprisonment is 15 years which may extend to 30 years while minimum fine is Rs. 1.5 lakh, which may extend to Rs.3 Lakh Section 31(a) of the Act, which was inserted by the Amendment Act of 1988, has even provided that for certain offences, after previous convictions, death penalty shall be imposed, without leaving any discretion in the Court to award imprisonment for life in appropriate cases. Another amendment of considerable importance introduced by the Amendment Act, 1988 was that all the offences under the Act were made triable by a special court. Section 36 of the Act provides for constitution of special courts manned by a person who is a Sessions Judge or an Additional Sessions Judge. Appeal from the orders of the special courts lie to the High Court. Section 37 makes all the offences under the Act to be cognizable and non-bailable and also lays down stringent conditions for grant of bail. However, despite the stringent provisions of the NDPS Act, 1985 as amended in 1988 drug business is booming; addicts are rapidly rising; crime with its role to narcotics is galloping and drug trafficking network is ever growing. While interpreting various provisions of the statute, the object of the legislation has to be kept in view but at the same time the interpretation has to be reasonable and fair.

12. Complete bar on grant of bail after conviction under the Act in serious cases was put by Section 32-A of the Act added in 1989. However still, bails after conviction were being granted by some High Courts even after its incorporation in the Act by the Amendment Act 2 of 1989. In *Maktool Singh Vs . State of Punjab* : 1999 CriLJ1825 , while interpreting the provisions of Section 32-A of the Act, it has been held that Section 32-A of the Act has taken away the powers of the Court to suspend a sentence passed on persons convicted of offences under the Act (except Section 27) either during pendency of any appeal or otherwise and this

provision would have an overriding effect with regard to the powers of suspension, commutation and remission provided under the Code. Contrary view taken by some High Courts has been overruled.

13. This Act obviously is a special legislation intended to deal with a great global malady of drug abuse caused due to drug trafficking. To that extent, it is a complete code. Any other provision of law if it impinges on the objects sought to be achieved by this Act will be contrary to this enactment and necessarily overridden by the Act, expressly or by implication. Conveyance used for carrying the contraband is liable to confiscation, of course, after making due inquiry. Second proviso to sub-section (2) of Section 63 of the Act itself provides for interim orders for the disposal of any article or thing other than a narcotic drug etc. which is liable to speedy and natural decay, or if the Court is of the opinion that its sale would be for the benefit of its owner, to direct it to be sold. This specifically provides for interim orders regarding disposal of seized articles or goods other than the contraband, and obviously includes a conveyance used in transportation. This by necessary implication excludes any other interim order to be made.

14. The provisions of section 451 which provides for order for interim custody and disposal of the property pending trial is identical, in case the property is subject to speedy and natural decay and if it is otherwise in the interest of the owner. To this extent, the provisions of Section 451 of the Code are not applicable. The Bombay High Court in B.S. Rawant (supra) case, in this behalf, in para 10, has observed as under:-

'10. The object of the Act is to see that the vehicle which is used for such an offence is not made available to the persons who have indulged in these activities. They shall not have the benefit of such a vehicle. By and large if an accused person is himself the owner of the vehicle and he uses such a vehicle for the purpose of conveying the drugs, then of course, it is possible for the prosecution to contend that it is against the interest of justice that such a vehicle be given to the accused pending the trial. But in a given case, it might be that a vehicle belonging to innocent owner is stolen by the accused, and in that event, seized by the officer, it does not mean that such an owner has to wait till the trial is completed for the

purpose of getting an order of return of the vehicle from the Magistrate. In such cases, subject to a guarantee that the vehicle becomes available for the purpose of confiscation, if any, the Court has necessarily the jurisdiction to pass an order for interim custody either under S. 451 or S. 457(1) on the Criminal P.C. as the case may be. An order under S. 451 or S. 457(1) of the Criminal P.C. guarantees return of the vehicle at the time of the final hearing of the matter, or as and when called upon by the Court. It secures, subject to certain terms and conditions, the interim custody of the vehicle, pending the trial. In fact, the operation of S. 451 or S. 457(1) of the Criminal P.C. comes into existence only after the vehicle is seized and brought into safe custody, as provided under Section 55 of the Act. If it is so, it cannot be said that Section 451 or Section 457(1) of the Criminal P.C. is in any way inconsistent with the scheme of the Act.'

15. According to this reasoning, there would be two yardsticks to be used, one in case the person carrying the contraband is the owner of the vehicle, that vehicle would not be given on interim custody to its owner, and another in case some other person claims ownership of the vehicle, the vehicle could be given to him by way of interim custody. In that case, persons engaged in such illegal trafficking would find it more advantageous not to use their own vehicle but use vehicle of someone else and in the latter case merely by the fiat of mere saying of owner of such vehicle that the vehicle was used without his or his agent's knowledge or connivance or of the person-in-charge of the conveyance, he would be able to secure the interim custody of the vehicle. And such vehicle could again be similarly used. This is likely to defeat the very purpose of the Act which provides for confiscation of such vehicle. Such an interpretation, in my respectful view, would be against the object and purpose of the Act.

16. Assuming the petitioner is the owner of the vehicle but the question whether the vehicle was used without her knowledge or connivance is a question of fact to be determined after evidence, if any, is produced in proper inquiry. It may not be sale always to accept such a plea as a gospel truth to give interim custody of the vehicle to such a person. Question remains that the vehicle in question was used as a conveyance by the accused who is the husband of the petitioner for carrying the contraband. There seems to be no sound reason that if the owner is not

entitled to interim custody of such vehicle because the vehicle is liable to be confiscated, why another person who may be the owner of the vehicle should be given the custody of the vehicle during the pendency of the case till he proves his non-complicity. As also observed by the Bombay High Court, the purpose of the Act is to see that the vehicle which is used for such conveyance is not made available to the persons indulging in these activities. Confiscation of the vehicle is an additional safeguard to discourage this crime.

17. As already noticed, the vehicle has been kept secured in a garage and it is not lying in open and as such there is no danger of it being damaged by vagaries of weather. If the vehicle is returned to the petitioner and ultimately it is held that it is liable to be confiscated, its use by the petitioner will benefit the petitioner and defeat the purpose and object of the Act and when ultimately it is to be confiscated it would have lost its value. Moreover, accused Amar Pal Singh is the husband of the petitioner Smt. Narender Kaur. In his statement made before the investigating officer on 25.3.1997 under Section 67 of the Act, he has stated that this car was purchased in the year 1997 and was a second-hand one; it is in the name of his wife but was purchased by them after selling another Car No.DL-2C B-3835; some amount was contributed by his wife and some amount was contributed by him. In the circumstances, it is also not certain whether the car exclusively belongs to the petitioner. It is also seen that on search of his house at C-89, Fateh Nagar, New Delhi, inter alia, 4 gms. of Heroin, one vacuum sealer, small weighing scale were recovered. This would show that some activity in drug is also being done at the house where the petitioner lives. This must be in the knowledge of the petitioner. The use of the car in the present case in the circumstances may not be without her knowledge.

18. The learned Trial Court has exercised discretion in disallowing the request of the petitioner for the return of the car primarily on the ground that it is liable to be confiscated under the Act. In the facts and circumstances, for the reasons given above, it cannot be said that the exercise of the power by the Trial Court is unreasonable and unwarranted which calls for interference under inherent powers of Section 482 of this Court.

19. For these reasons, I do not find any merit in this petition and the same is hereby dismissed.

20. Nothing stated herein shall be taken as expression of opinion on the merits of the case during trial/inquiry.

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