



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 1918/2017

Narcotics Control Board Bureau, Zonal Unit, Jodhpur, Sector 18-E, Chopasani Housing Board, Jodhpur Rajasthan

-----Appellant

Versus

Shoyab Khan S/o Sadiq Khan, R/o 14, Mahaveer Basti, Teh And Dist- Pratapgarh Rajasthan.

-----Respondent

For Appellant(s) : Mr. MR Pareek
For Respondent(s) : Mr. Manish Pitaliya

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

Reportable

13/07/2022

The matter comes up on application preferred by NCB under Section 52-A of narcotic Drugs and Psychotropic Substances Act, 1985.

Mr. M.R. Pareek, counsel for the applicant, submits that the contraband in-question was seized from Alto car No.RJ06-CA-5239 on 26.12.2012.

Counsel for the applicant further submits that the inventory, which marks vehicle in-question, has been verified by the concerned Magistrate.

Counsel for the applicant further submits that this is not a confiscation proceeding under Sections 60, 61, 62 & 63 of NDPS Act but simply an application preferred under Section 52-A of NDPS Act to avoid further deterioration of vehicle in-question.



Counsel for the applicant submits that the proceeds shall remain subject to final outcome of appeal or any decision taken under Section 63 of the NDPS Act.

Counsel for the applicant has also drawn attention of this Court to Gazette notification dated 16.01.2015, in which, manner has been prescribed as to how narcotic drugs psychotropic substance controlled substance order and conveyance seized shall be disposed of under Section 52A of NDPS Act.

Section 52A of Narcotic Drugs and Psychotropic Substances Act, 1985, read as follows:-

“52A. Disposal of seized narcotic drugs and psychotropic substances.❧

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of❧

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.





(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence].”

The Gazette notification dated 16.01.2015, particularly, relevant para-2, 4, 5 & 9, whereof reads as follows:-

“2. Items to be disposed of.- All narcotic drugs, psychotropic substances, controlled substances and conveyances shall be disposed of under Section 52A of the said Act.

4. Manner of disposal.-(1) Where any narcotic drug, psychotropic substance, controlled substance or conveyance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the said Act or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of section 52A of the said Act as per Annexure 2 to this notification within thirty days from the date of receipt of chemical analysis report of seized narcotic drugs, psychotropic substances or controlled substances.

(2) After the Magistrate allows the application under sub-section (3) of section 52A of the said Act, the officer mentioned in subparagraph (1) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the seized items to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal, and the aforesaid officer shall send a copy of the details along with the items seized to the officer-in-charge of the godown.

5. Drug Disposal Committee.- The Head of the Department of each Central and State drug law enforcement agency shall constitute one or more Drug Disposal Committees comprising three Members each which shall be headed by an officer not below the rank of Superintendent of Police, Joint Commissioner of Customs and Central Excise, Joint Director of Directorate of Revenue Intelligence or officers of equivalent rank and every such Committee shall be directly responsible to the Head of the Department.

9. Mode of disposal of drugs.-(1) Opium, morphine, codeine and thebaine shall be disposed of by transferring to the





Government Opium and Alkaloid Works under the Chief Controller of Factories.

(2) In case of narcotic drugs and psychotropic substances other than those mentioned in sub-paragraph (1), the Chief Controller of Factories shall be intimated by the fastest means of communication available, the details of the seized items that are ready for disposal.

(3) The Chief Controller of Factories shall indicate within fifteen days of the date of receipt of the communication referred to in sub-paragraph (2), the quantities of narcotic drugs and psychotropic substances, if any, that are required by him to supply as samples under rule 67B of the Narcotic Drugs and Psychotropic Substances Rules, 1985. (4) Such quantities of narcotic drugs and psychotropic substances, if any, as required by the Chief Controller of Factories under sub-paragraph (3) shall be transferred to him and the remaining quantities of narcotic drugs and psychotropic substances shall be disposed of in accordance with the provisions of sub-paragraphs (5), (6) and (7).

(5) Narcotic drugs, psychotropic substances and controlled substances having legitimate medical or industrial use, and conveyances shall be disposed of in the following manner:-

(a) narcotic drugs, psychotropic substances and controlled substances which are in the form of formulations and labeled in accordance with the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) and rules made thereunder may be sold, by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, after confirming the composition and formulation from the licensed manufacturer mentioned in the label, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and the rules and orders made thereunder, provided that a minimum of 60% of the shelf life of the seized formulation remains at the time of such sale;

(b) narcotic drugs, psychotropic substance and controlled substances seized in the form of formulations and without proper labeling shall be destroyed;

(c) narcotic drugs, psychotropic substances and controlled substances seized in bulk form may be sold by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), and the rules and orders made thereunder, after confirming the standards and fitness of the seized substances for medical purposes from the appropriate authority under the Drugs and Cosmetics Act, 1940 (23 of 1940) and the rules made thereunder;





(d) controlled substances having legitimate industrial use may be sold, by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and the rules and orders made thereunder;

(e) seized conveyances shall be sold off by way of tender or auction as determined by the Drug Disposal Committee.

(6) Narcotic drugs, psychotropic substances and controlled substances which have no legitimate medical or industrial use or such quantity of seized items which is not found fit for such use or could not be sold shall be destroyed.

(7) Destruction referred to in sub-paragraph (b) shall be by incineration in incinerators fitted with appropriate air pollution control devices, which comply with emission standards and such incineration may only be done in places approved by the State Pollution Control Board or where adequate facilities and security arrangements exist and in the latter case, in order to ensure that such incineration may not be a health hazard or polluting, consent of the State Pollution Control Board or Pollution Control Committee, as the case may be, shall be obtained, and the destruction shall be carried out in the presence of the Members of the Drug Disposal Committee.”

Mr. Manish Pitaliya, counsel for the respondent, submits that there are certain safeguards regarding the ownership of vehicle, which are provided in Section 60 and 63 of NDPS Act, whereby the owner has to be given an opportunity of hearing so as to allow him to claim any right thereto and the evidence if any, which he produces in respect of his claim upon the vehicle in-question.

Counsel for the respondent also submits that the amendment and Gazette notification have no retrospective effect and thus, same cannot apply in the present case.

Counsel for the respondent also submits that once the final acquittal order has been made in trial, then the operation of Section 52A was not warranted and the scheme of law provides only Sections 60, 61, 62 & 63 to operate.





Counsel for the respondent also submits that no application has been filed before the learned trial court or the Magistrate court as provided in law.

Counsel for the respondent further submits that verification of the vehicle is doubtful.

Counsel for the respondent also submits that respondent has been acquitted from charge under Section 8/25 of NDPS Act.

This Court after hearing counsel for the parties is of the firm opinion that Section 52A has a different legislative intent than Section 60, 61, 62 & 63. The legislative intent of Section 52A is not of confiscation but simply of disposal of seized vehicle or substance to save it from hazardous nature, theft, substitution, constraint of proper storage space or any other relevant consideration.

The legislative intention is very clear from a bare reading of Section 52A of NDPS Act and it does not prejudice the rights of the owner of vehicle or any substance to defeat confiscation proceedings under Sections 60, 61, 62 & 63 whereby final rights of such proceeds can be determined. 52A is an interim measure and is only to enable NCB to overcome the constraints of hazardous nature, theft, substitution, constraint of proper storage space or any other relevant consideration, which are already mentioned in Section 52A of NDPS Act. However, proceeds arising out of Section 52A shall remain with the NCB in capacity of custodian until a final decision is taken by the competent court regarding the final ownership which shall be in accordance with Sections 60, 61, 62 & 63.



The Notification though subsequent but would apply because no new definition of crime has been carved out nor any substantive change has been made and merely a procedure has been prescribed and the procedure for such auction of seized substance has to be applied whenever such satisfaction is recorded by the Authority to dispose of the seized substance. Since the final determination of rights of owner/claimant vis-a-vis the NCB has to be done in the confiscation proceedings therefore, the summary proceedings of Section 52A would not require any further safeguards then what are already available under Section 52A as well as in the Notification dated 16.01.2015.

In light of aforesaid observations, the application is allowed. The applicant-NCB is given liberty to proceed under Section 52A of NDPS Act. The auction amount shall remain subject to final outcome of the appeal/proceedings under Sections 60, 61, 62 & 63 of NDPS Act.

(DR.PUSHPENDRA SINGH BHATI), J.

41-Nirmala/Sanjay-

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