

HIGH COURT OF SIKKIM, GANGTOK
(Criminal Revisional Jurisdiction)

HON'BLE SHRI SUMIL KUMAR SINHA, CHIEF JUSTICE

Crl. Rev. P. No. 10 of 2015

Shri Manoj Kumar Gupta,
S/o Late Chandrika Prasad,
Aged about : 35 years,
Resident of Rongchong Busty,
Post Office : Lohapul,
Police Station : Rangali Rongliot,
District : Darjeeling,
State of West Bengal.

(Registered Owner of Tata Truck bearing
Registration number WB-73-B-5152)

... **PETITIONER**

Versus

State of Sikkim

... **RESPONDENT**

**Criminal Revision under Sections 397 and 401 of the Code of
Criminal Procedure, 1973.**

Appearance :

Mr. Ajay Rathi and Ms. Phurba Diki Sherpa, Advocates
for the Petitioner.

Mr. J. B. Pradhan, Public Prosecutor with Mr. S. K.
Chettri and Ms. Pollin Rai, Asstt. Public Prosecutors for
the State.

ORDER

(20.11.2015)

SUNIL KUMAR SINHA, CJ.

1. Petitioner is the Registered Owner of TATA Truck Number WB-73B/5152. The said truck was seized by Melli Police on 31.05.2015 in connection with FIR No.11/2015, registered u/Ss. 9(b) & (d) and 14 of the Sikkim Anti Drugs Act, 2006 (SADA, 2006) and S. 19 of the Sikkim Trade Licence Act, 1985.

2. According to the Prosecution, cement was loaded in the said truck and it was in possession of the driver and cleaner, who were taking the cement to its destination. When the truck was checked, some controlled substances were found wrapped in a polythene bag which was kept in the driver's cabin. The details of controlled substances are as follows: -

- (i) 5 Full strips containing (24 x 5) 120 Spasmoproxyvon capsules.
- (ii) 2 loose strips containing 18 spasmoproxyvon capsules.
- (iii) One loose strips of Nitrosun-10 containing 08 tablets.
- (iv) Two small pouches of Ganza.

3. The Prosecution came with the case that the above controlled substances were being carried by the driver and the cleaner (the two accused persons), therefore, they were liable for punishment u/S. 9(b) and 9(d)/14 of the SADA, 2006 and the truck was liable for confiscation.

4. The Petitioner, registered Owner of the truck, after getting information about its seizure, filed an application u/S. 457 of the Cr.P.C., 1973 before Special Court, Sikkim Anti Drugs Act, 2006, South Sikkim at Namchi. This was registered as Criminal Miscellaneous Case No. 66 of 2015. The learned Special Court, after hearing the parties, allowed the said application on 29.09.2015 and directed that the aforesaid truck be released to the Petitioner on his making a payment of Rs.1,00,000/- as required by S. 9(d) of the SADA, 2006.

5. Being aggrieved with the aforesaid condition, the Petitioner has filed this revision.

6. Mr. Ajay Rathi, learned Counsel appearing on behalf of the Petitioner, has argued that the Petitioner had no knowledge about the fact that his driver and cleaner were carrying the above controlled substances while taking the cement to its destination. He further argued that, in fact, no *prima facie* case u/S. 9(d) of the SADA, 2006 is made out on the allegations of the Prosecution, therefore, the said Section would not be attracted and condition of depositing Rs.1,00,000/-, as provided in this section, would not be required.

7. On the other hand, Mr. J. B. Pradhan, learned Public Prosecutor appearing on behalf of the State, has opposed these arguments. However, he did not dispute that the truck was seized

on 31.05.2015 and it is lying in stationary condition in the premises of the concerned Police Station.

8. I have heard Counsel for the parties.

9. It appears that the learned Special Court imposed condition of depositing Rs. 1,00,000/- for release of the truck on the basis of the provisions contained in S. 9(d). S.9 deals with the punishment for contravention of controlled substances. It falls under Chapter IV dealing with the offences and penalties. Clause (d) of S.9, as extracted from the Act, reads as under: -

“9. Whoever, contravenes any provision of this Act or any rule or any order made thereunder shall be punishable -

- (a)
- (b)
- (c)
- (d) where the contravention involves a person using a mode of transport or any other form of conveyance, either inter-State or intra-State, such person shall be liable to imprisonment for a term which may extend to five years or with fine which may extend to two lakh rupees, or with both, and the vehicle as used, shall be liable to be seized and confiscated, which may be released on payment of one lakh rupees;
- (e)
- (f) ”

10. A perusal of clause (d) of S.9 makes it clear that the said clause (d) would be attracted where the contravention involves a person using a mode of transport or any other form of conveyance and in such cases, the vehicle as used shall be liable to be seized and confiscated which may be released on payment of Rs.1,00,000/-. A contravention using a mode of transport or any other form of conveyance and a simple contravention, thus, are two

different instances which is clear from reading the entire Section 9. For example, a person carrying small quantity of controlled substances, like in the present case, may travel by taxi, passenger bus or any other public transport and reach to his destination, but, in such cases, it would not be justified to say that the alleged contravention was made by him using a mode of transport. "Contravention using a mode of transport", therefore, would not be understood as simply moving of the accused by any conveyance, having possession of meager amount of controlled substances. On the contrary, for attracting the provision of clause (d), there must be evidence to the effect that a particular mode of transport was purposely and intentionally utilized by the accused for commission of the offence and in absence of such mode of transport the offence of such degree would, possibly, not have been committed. The words used by the legislature like 'inter-State or 'intra-State' in later part of S. 9 (d) are also indicative about the gravity of an offence u/S 9(d).

11. In the instant case, *prima facie*, it does not appear that the alleged contravention, in fact, involves the accused persons using a mode of transport as envisages in clause (d) of S. 9. Here, the mode of transport was not used for commission of contravention as is clear from the quantity of the controlled substances, but, the accused persons, being driver and cleaner of the vehicle, by chance, while taking the cement to its destination

were also allegedly found in possession of the above quantity of the controlled substances.

12. S. 44 of the SADA, 2006 provides for saving of other laws. It says that the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force regulating any of the matters dealt with in this Act. It is, therefore, clear that the provisions relating to disposal of property contained in chapter 34 of the Cr.P.C. would be applicable in cases of interim custody of any property seized during the course of investigation of an offence under SADA, 2006. The Petitioner, being the registered Owner of the vehicle, having unaware of the commission of the alleged offence by the accused persons, therefore, had rightly filed an application for its interim custody, which was allowed by the Special Court, however, with a condition of depositing Rs.1,00,000/- which does not appear to be correct or reasonable in the present facts and circumstances of the case.

13. In ***Sunderbhai Ambalal Desai vs. State of Gujarat*** : **2003 SCC (Cri) 1943**, Hon'ble Supreme Court stated purpose of exercise of powers u/Ss. 451 and 457 of the Cr.P.C. and insisted upon expeditious disposal of the properties seized during the course of investigation. It was held that powers u/S. 451 Cr.P.C. should be exercised expeditiously and judiciously.

14. Motor vehicle is a machinery and keeping it in stationary position at an open place for a long time would

ultimately deteriorate its condition and cause damage to it making it a junk of no value at the end of the trial which is likely to take some more time. Therefore, even otherwise also imposing such a condition which appears to be onerous and amounting to nullifying the order of release was not justified.

15. For all these reasons, the Petition is allowed. The condition of depositing Rs.1,00,000/- for release of the vehicle on interim custody (*supurdnama*) is set aside. It is directed that the vehicle TATA Truck bearing Registration Number WB-73B/5152 along with its key and documents shall be released on interim custody of the Petitioner on executing a *supurdnama* in sum of Rs.1,00,000/- with a local surety in like sum (Rs.1,00,000/-) to the satisfaction of the Special Court for production of the said vehicle before the Special Court/any other Court as and when directed.

Sd/-
Chief Justice
20.11.2015

Approved for Reporting
Internet

: Yes/No
: Yes/No

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