

[2024 LiveLaw \(SC\) 395](#)

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
J.B. PARDIWALA; J., MANOJ MISRA; J.**

May 14, 2024

Criminal Appeal No 2562 of 2024 (Arising out of SLP (Crl) No 1735 of 2023)

Pukhraj versus State of Rajasthan

Narcotic Drugs and Psychotropic Substances Act 1985; Section 63 – Order of confiscation and auction of article is challenged – The court cannot order confiscation of an article until the expiry of one month from the date of seizure or without hearing any person who may claim any right thereto. Held, the appellant is the registered owner of the article and has a right to be heard by the court before the final order of confiscation is passed and the seized vehicle is put to auction. Hence, the order passed by the trial court to the extent it orders confiscation and auction of the dumper is set aside. (Para 13, 14 & 15)

(Arising out of impugned final judgment and order dated 25-07-2022 in SBCRRP No.521/2021 passed by the High Court of Judicature for Rajasthan at Jodhpur)

For Appellant(s) Mr. Rishabh Sancheti, Adv. Ms. Padma Priya, Adv. Mr. K. Paari Vendhan, AOR

For Respondent(s) Mr. Asad Alvi, Adv. Mr. Milind Kumar, AOR Ms. Saba A.K. Patel, Adv. Mr. Hamid Irfan, Adv.

ORDER

1 Leave granted.

2 This appeal arises from a order passed by the High Court of Judicature for Rajasthan at Jodhpur dated 25 July 2022 in SB Criminal Revision Petition No 521 of 2021 filed by the appellant herein by which the High Court rejected the revision application and thereby affirmed the order of confiscation of the vehicle (dumper) passed by the trial court in Sessions Case No 17 of 2017 seized in connection with the FIR No 141 of 2017 registered with Shambugarh Police Station, District Bhilwara.

3 Short facts giving rise to this appeal are as under:

A First Information Report came to be registered at the Shambhugarh Police Station against the appellant herein and two other co-accused by name Pukhraj and Ram Bishnoi for the offence punishable under Sections 8, 15, 25 and 29 respectively of the Narcotic Drugs and Psychotropic Substances Act 1985 (for short 'the NDPS Act'). It appears that the two co-accused were arrested. However, the appellant herein remained absconding.

4 At the end of the investigation, charge-sheet came to be filed for the offences enumerated above. Since the appellant herein was absconding, his trial came to be separated by virtue of Section 299 of the Code of Criminal Procedure (for short 'CrPC').

5 The trial concluded in the acquittal of the two co-accused. The operative part of the order passed by the trial court reads thus:

"Therefore accused Pappuram s/o Mr. Mangalaram, caste Vishnoi, aged 40 years, resident of Dhani Police Station, Kokariya, Pipar City, District Jodhpur under section 8/15 NDPS Act and accused Omaram s/o Mr. Joraram, caste Vishnoi, resident of Ramdawas Police Station, Pipar City Hall Plot no. 23 Prabhatnagar, Naddi Police Station, Banar District, Jodhpur, is declared acquitted by providing "benefit of doubt" under Section 8/29 of the NDPS Act for the alleged offence.

In the case, the seized vehicle is by the government and the concerned police officer is ordered to auction the vehicle seized in the case as per the term of appeal as per the rules and the amount received from the auction should be deposited in the state treasury. In case of confiscated goods, action should be taken as per the appeal rules.

In the case, search is on against the accused Pukhraj's son Mr. Joraram Vishnoi, resident of Ramdawas police station, Pipar city hall, plot number 23, Prabhat Nagar, Naddi police station, Jodhpur under section 8/25 of NDPS Act. Therefore, a note should be made on the head of the letter with red ink so that no part of the letter should be lost.”

6 It is the case of the prosecution that the contraband was seized from a dumper owned by the appellant herein. It is not in dispute that the appellant herein is the registered owner of dumper No RJ-21GB 2889. Along with the contraband, the dumper was also seized.

7 The trial court while acquitting the two co-accused ordered confiscation of the dumper. The trial court while ordering confiscation also said that the dumper be now put to auction and the sale proceeds shall be deposited with the State treasury.

8 After the acquittal of the two co-accused named above, the appellant herein came to be arrested. He was ordered to be released on bail. The case of the appellant is that the trial court could not have ordered confiscation of the dumper without giving an opportunity of hearing to him, being the registered owner and without following the provisions of Section 63 of the NDPS Act.

9 The order of confiscation referred to above passed by the trial court came to be challenged by the appellant herein before the High Court by way of a revision application. The High Court thought fit not to entertain the revision application and rejected the same.

10 In such circumstances referred to above, the appellant is here before this Court.

11 We have heard Mr Rishabh Sancheti, the learned counsel for the appellant and Mr Asad Alvi, the learned counsel for the respondent-State.

12 Section 63 of the NDPS Act reads thus:

“63. Procedure in making confiscation.—(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 [controlled substance] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that it 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.”

13 The plain reading of Section 63 indicates that the court cannot order confiscation of an article until the expiry of one month from the date of seizure or without hearing any person who may claim any right thereto. It is true that at the time of the order of

confiscation of the dumper, the appellant herein was not arrested. Had he been put to trial along with the other two co-accused, probably he would have submitted before the trial court why the confiscation order may not be passed.

14 The fact remains that the appellant is the registered owner of the dumper. In terms of the provisions of Section 63 of the NDPS Act, the appellant has a right to be heard by the court before the final order of confiscation is passed and the seized vehicle is put to auction.

15 In such circumstances, we set aside the order passed by the trial court dated 22 February 2021 in Sessions Case No 17 of 2017 to the extent it orders confiscation and auction of the dumper. The trial court shall give an opportunity of hearing to the appellant herein in this regard and, thereafter, proceed to pass a fresh order in accordance with law.

16 The appellant shall prefer an appropriate application before the trial court within a period of six weeks from today to give him an opportunity of hearing so far as the issue of confiscation of dumper is concerned. Once such an application comes on record, the trial court shall proceed to hear the appellant and pass a fresh order within a period of two weeks thereafter.

17 With the aforesaid, the appeal stands disposed of.

18 Pending applications, if any, stand disposed of.

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