

News Heading : No deprivation of property to be made against the principles of natural justice: Kerala H.C

Courtesy: Harpreet Kaur

A writ petition was filed in the H.C of Kerala to issue a writ of mandamus order or directions against the 2nd & 3rd respondent. The petitioner firm, M/s Smart Logistics seek interim custody u/s 451 of CrPC if the lorry seized under NDPS Act, 1985.

Facts :

The petitioner is a partnership firm who conducts the services of parcel & transport. The lorry worth 1 lakh rupees belongs to the firm. While the police was conducting patrol duty, the same lorry was searched by the police & 120 grams of ganja was found. It was kept by the driver of the vehicle in the cabin of the lorry.

The vehicle & the drug were seized & a case was registered u/s 20(6)(ii)A of the Act. The petitioner filed an application u/s 45 of CrPC before the First Class Judicial Magistrate & it was dismissed. The second respondent in the petition in the sub inspector of Vatakara P.S. & the third respondent in the Drug Disposal Committee constituted u/s 52A of the Act.

Submission of the petitioner :

The learned counsel appearing for the petitioner submitted :

1. That neither the petitioner firm nor it's managing partner are connected with the offence alleged against the driver.
2. That they did not have any knowledge, that a contraband substance was being carried in the lorry.
3. That the vehicle should not be disposed off by the 3rd respondent, as it was not involved in the offence.
4. That the vehicle should be released to the petitioner.

Submission of the 3rd Respondent:

The learned counsel appearing for the respondent submitted :

1. That after the seizing of the contraband substance & the vehicle, they were produced before the Magistrate & the inventory prepared has been certified u/s 52A of the Act by the Learned Magistrate.
2. That they were instructed to proceed in the disposal of the vehicle u/s 52A & the prosecution contention that the vehicle is not involved in the crime is incorrect.
3. That u/s 52A, the drugs or conveyances are to be immediately disposed off & not to preserve till the culmination of trial.
4. That the Magistrate do not have the power to grant interim custody of the vehicle to any person u/s 451 of CrPC. [*Shahjahan v Inspector of Excise : 2019 (5) KHC 401*].
5. That the committee do not have power to release the vehicle on a request made by its owner, therefore the petition should be dismissed.

Observations of the Court :

The court referred to section 52A of the NDPS Act. It was stated that after the amendment in 2014, the section also provided for disposal of conveyances alongwith the contraband substance seized. The procedure for such disposal has been prescribed through a notification in 2015 issued by the Central Government. It was also noted that sub-clause (e) of para 9 of the notification provides, that the conveyances seized under the NDPS Act should be sold off by way of tender of auction, determined by the Drug Disposal Committee.

The court observed that the same application filed u/s 451 of CrPC was dismissed by the Learned Magistrate. The petitioner has not challenged such order & so the writ to direct the sub inspector for releasing the vehicle is not maintainable.

The court while deciding whether the writ of mandamus can be issued to the 3rd respondent, referred to Shahjahan case. A contention which was relied before the bench was that without enquiry whether the drugs belong to the actual transporter or not, it would not affect the rights of the owner of such vehicle. This was assured by the court stating that conveyances have been included after the amendment indicated that the government intended to provide a special procedure in dealing with them. And u/s 63 of the Act, the officer has to act according to the procedure in disposing off the drugs or conveyances.

The court pointed that neither the notification provides for holding an enquiry before the disposal by the committee nor can the conveyance seized can be released to the interim custody of the owner.

Moreover, the court also pointed that a mandamus writ can only be issued, if there exist a statutory duty or right towards the applicant. No provisions in the Act or notification imposes a duty on the committee to release the seized conveyance & so writ of mandamus directing the 3rd respondent to release the vehicle cannot be granted. It was also held that when the application u/s 451 of CrPC have already been dismissed on the grounds, that there lies no power to grant such order, the H.C cannot invoked its inherent powers u/s 482 of Code in exercise of his jurisdiction by granting the interim custody of the vehicle to any person. [*State of West Bengal v Sujit Kumar Rana : AIR 2004 SC 1851*].

The court stated that the provision contained in Sec 52A intends to send a message to the owners of the vehicle, not to allow this vehicle for transporting any illegal substance. There is a high possibility that after releasing the vehicle, it can be re-used for same purposes.

Moreover, the court also stated that a conveyance seized can only be disposed off u/s 52A if it can be confiscated. And a conveyance is only liable to be confiscated u/s 60 (3) of the Act if it is used in carrying the Narcotic Drug or contraband substances. The presence of small amount of such substance in the vehicle without the knowledge of the owner, does not necessarily mean that the vehicle is used in the carrying if such substance.

The court pointed out clause (2) of para 4 of the notification provides for a decision to be made by the committee on the disposal. Tehran committee has to decide whether the conveyance is liable to be disposed off by sale or not before ordering its disposal. The court also pointed right to property is still a Constitutional right & human right under Article 300A. It includes right to own any movable property. And no authority can deprive a person of his property. The court stated :

"Seizure made in violation of law amounts to deprivation of property. It would be against the principles of natural justice if a person is deprived of his property without making an enquiry on the plea raised by him".

A reasonable opportunity given to the person of being heard who will be affected before such order has to be read into the provisions of the Notification. Though the function of the Committee is only administrative, but the principles of natural justice is attached to it.

However, the court pointed that the petitioner has not challenged the constitutional validity of any of the provisions contained in the notification. Also they have not called the seizure void or illegal & so the court cannot decide on such matter.

Judgement : The writ petition was rejected but the Court granted the petitioner the liberty to make a representation to the Drug Disposal Committee within 15 days to raise this claim over the vehicle seized.

Judge : R. Narayana Pisharadi

Case Courtesy : M/s Smart Logistics v State of Kerala & ors.