

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

(THROUGH VIRTUAL MODE)

Pronounced on: 02.01.2025

Case No. : CrI A (D) No. 10/2023

1. Mohammad Amin Sheikh, Age 65 years,
S/o Abdul Gani Sheikh,
R/o Hajinar Tehsil Karnah District Kupwara.
2. Khalida Begum, Age 40 years,
W/o Zameer Ahmad Sheikh,
R/o Hajinar Tehsil Karnah District Kupwara. ...Appellant(s)..

Through: - Mr. Parvaiz Ahmad Wani, Advocate.

V/s

1. Divisional Commissioner Kashmir, Srinagar.
 2. Deputy Superintendent of Police (PC) Kupwara District, Kupwara.
 3. SHO Police Station, Karnah, Kupwara.
 4. Branch Manager, J&K Bank Branch Tangdar Karnah, Kupwara.
- ... Respondent(s)..

Through: - Mr. Mohsin Qadiri, Sr. AAG.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

1. The appeal is preferred against order dated 17.12.2022, passed by the learned Court of Additional Sessions Judge, Baramulla (NIA Court) and order dated 29.08.2021 passed by Divisional Commissioner, Kashmir. The proceedings initiated by the police regarding the seizure are also questioned in appeal. In FIR No. 57/2020 filed under Sections 13, 16, 18, 38 of the Unlawful Activities (Prevention) Act, 1967 and 8/21 NDPS Act and 7/25 Arms Act and registered with Police Station, Karnah the vehicle bearing No. JK01AJ/0219 has been seized during the course of

investigation. Later on, respondent-Divisional Commissioner, Kashmir has confirmed the order of seizure of the vehicle. The appeal was filed against the order dated 29.08.2021 passed by the Divisional Commissioner (Designated Authority). The appeal filed before the NIA Court stands dismissed vide order dated 17.12.2022. The appellate court confirmed the order of Designated Authority.

2. The present appeal is filed against both the aforesaid orders.
3. The respondents have appeared in the appeal and contested the same.
4. The submission of the learned counsel for the appellants is that Section 25 of UA (P) Act has not been complied with as the vehicle seized was required to be produced before the Designated Authority by the Investigating Officer within 48 hours from the seizure of the vehicle. The I.O referred the matter to the designated authority after 10 months of the seizure of the vehicle in question. The mandate of Section 25 of the Act has been violated. The Designated Authority has not followed the procedure while passing the impugned order. It is finally submitted that the vehicle be released in favour of the appellants as the value of the vehicle will diminish and no useful purpose will be served in case the vehicle is retained by the police authorities. The appellate court has not taken care of the provisions of law and has confirmed the order of the Designated Authority without determination of aforesaid issues is also the submission of the counsel.
5. Learned Senior Additional Advocate General appearing for the respondents has argued that the vehicle in question has been seized as it was found to be involved under the UA(P) Act and large number of arms and ammunition and even narcotics stand seized from the vehicle. There is no flaw in the orders impugned in the appeal. The appellants cannot be allowed to have the fruits of the vehicle when it is used for unholy acts. The orders impugned are passed as per law.

6. Section 25 of the UA (P) Act empowers the investigating officer to make an order for seizure of the property believing the same to be proceeds of terrorism with the approval of the Director General of the Police. The seizure of the property is to be informed to the Designated Authority within 48 hours. The Designated Authority is to confirm or revoke the order of seizure within a period of 60 days is what is mentioned in Section 25 (3) of the UA (P) Act. The opportunity to make representation is required to be given whose property has been seized is also the mandate of Section 25 of the UA (P) Act. Admittedly, the vehicle has been seized, as per the record available, on 26.07.2020. The investigating officer was required to inform the seizure to the Designated Authority within 48 hours of the seizure. In the case in hand, the same has been done after about 10 months of the seizure. The information though required to be communicated within 48 hours of the seizure, the delay, if any, caused will not by itself be fatal. The time line given to inform the Designated Authority of seizure or attachment is not mandatory one keeping in view the fact that the seizure has been made under the stringent provisions of law. Similarly, if the Designated Authority fails to make its order within 60 days confirming or revoking the seizure, period prescribed for the Designated Authority to pass the order, the delay, if any, caused by the said Authority cannot be the reason to overturn the order on that basis only. It is not made out from the provision that in case the Authority fails to pass order within the period of 60 days, the proceedings initiated by the Investigating Officer regarding the seizure shall lapse. The Designated Authority had given opportunity to represent before it to the owner before the impugned order was passed. As such, the appellants cannot raise any grouse qua the impugned order on that score.
7. The vehicle under discussion is stated to have been used for illegal purposes as the arms and ammunition and narcotics have been

recovered from the vehicle in question. Every procedural lapse cannot invalidate the proceedings.

8. The seizure is sought to be held illegal on the ground that the vehicle being mortgaged could not be termed as proceeds of terrorism. The Court is not inclined to accept this argument of the appellants. The vehicle is alleged to have been used for terrorist purposes. The vehicle even if mortgaged is no ground to accept the argument of the appellants that the vehicle could not be seized by the police. The vehicle being used for illegal purpose is sufficient reason to seize the vehicle and proceeded under the Act.
9. It is also contended that the vehicle be released in favour of the appellants as if it remains idle for any longer time the value of the vehicle shall diminish. Otherwise also, retention of the vehicle will serve no purpose to the prosecution. The alleged purpose for which the vehicle has been used does not call for its release. The identity of the vehicle may also required to be established during the trial. The owner of the vehicle can be duly compensated later on in case the trial court finally determines that the vehicle is required to be forfeited.
10. As the argument of the counsel for the appellants mainly pertains to the procedure adopted in the case and this Court having held that the procedure lapse, if any, is not fatal in the case, the appeal is held to be without any merit and is, accordingly, dismissed.

(PUNEET GUPTA)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

JAMMU:
02.01.2025
Pawan Chopra

Whether the Judgment is speaking: Yes
Whether the Judgment is reportable: Yes/No