

Neutral Citation No. - 2024:AHC-LKO:61196

Court No. - 13

Case :- APPLICATION U/S 528 BNSS No. - 20 of 2024

Applicant :- Kanak Cattle Feeds Pvt. Ltd. Thru. Director
Abhishek Agarwal

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of
Home Lko And 2 Others

Counsel for Applicant :- Sushil Kumar, Kazim Ibrahim

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard Sri Sushil Kumar, learned Advocate assisted by Sri Kazim Ibrahim, Advocate, learned Counsel for applicant and learned AGA for the State of U.P. and gone through the record.
2. The present application has been filed seeking following main relief:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to allow this petition and issue: -

i. An order or direction to quash the impugned order dated 20.08.2024 passed by the Ld. Special Chief Judicial Magistrate (Custom) Lucknow in Case Crime No. 171/2024 in respect to the F.I.R. bearing Case Crime No. 171/2024 registered under Sections 318(4), 319(2), 183 BNSS and 11, 12 of UP Sheera Niyantran Adhiniyam, 1964, P.S.: Banthara, District: Lucknow, annexed as Annexure no. 1."

3. By means of the present application, the applicant has assailed the order dated 20.08.2024 passed by Special Chief Judicial Magistrate Custom, Lucknow (in short 'Magistrate), in

Case Crime No. 171 of 2024 under Sections 318(4)/319(2)/183 BNS and Section 11, 12 of UP Sheera Niyanttran Adhiniyam, 1964, P.S.- Banthara, District- Lucknow. The order dated 20.08.2024 being relevant reads as under:-

"प्रार्थी कनक कैटल फीड्स प्रा०लि० द्वारा निदेशक कृष्ण कुमार अग्रवाल पुत्र श्री ओम प्रकाश अग्रवाल, निवासी-आर-74 नेहरू इन्क्लेव, बिहाइण्ड फन माल गोमतीनगर, थाना-गोमतीनगर, जनपद-लखनऊ की ओर से अवमुक्ति प्रार्थनापत्र अन्तर्गत धारा -497 बी०एन०एस०एस० जरिये अधिवक्ता मु०अ०सं०-0171/2024, अन्तर्गत धारा-318(4), 319(2), 183 बी०एन०एस० व धारा-11, 12 उ०प्र० शीरा नियंत्रण अधिनियम, थाना-बंथरा, जनपद- लखनऊ के अभियोग में प्रार्थी की कम्पनी के परिसर को डी-सीज / खोलने हेतु प्रस्तुत किए गए अवमुक्ति प्रार्थनापत्र को सुना एवं प्रपत्रों का अवलोकन किया।

प्रार्थी कनक कैटल फीड्स प्रा०लि० द्वारा निदेशक कृष्ण कुमार अग्रवाल पुत्र श्री ओम प्रकाश अग्रवाल द्वारा प्रस्तुत अवमुक्ति प्रार्थनापत्र अन्तर्गत धारा-497 बी०एन०एस०एस०मय शपथपत्र के संक्षेप में कथन है कि आबकारी निरीक्षक द्वारा दिनांक- 15.07.2024 को प्रार्थी की कम्पनी पर छापा डाला गया था, जिसके सम्बन्ध में एक मुकदमा मु०अ०सं० -0171/2024, अन्तर्गत धारा- 318(4), 319(2), 183 बी०एन०एस० व धारा- 11, 12 उ०प्र० शीरा नियंत्रण अधिनियम, थाना बंथरा, जनपद- लखनऊ पंजीकृत किया गया था तथा उसके उपरान्त कम्पनी को पूर्णतया सील कर दिया गया। आगे प्रार्थी द्वारा कथन किया गया कि आबकारी कर्मचारियों द्वारा नियमों का अनुपालन नहीं किया गया तथा नमूने गलत प्रकार से लिये गये तथा साथ ही यह भी कथन किया गया कि कम्पनी को लगातार सील रहने से कर्मचारियों आदि का वेतन नहीं दिया जा पा रहा है। अतः उपरोक्त समस्त तथ्य एवं परिस्थितियों को दृष्टिगत रखते हुए प्रार्थी द्वारा उक्त कम्पनी के परिसर को सी-डीज/ खोलने की याचना की गयी है।

प्रार्थी के प्रार्थना पत्र के सम्बन्ध में सम्बन्धित थाने एवं जिला आबकारी अधिकारी लखनऊ से आख्या आहूत की गयी।

सम्बन्धित थाना-बंथरा द्वारा मु०अ०सं०- 0171/2024, अन्तर्गत धारा- 318(4), 319(2), 183 बी०एन०एस० व धारा-11, 12 उ०प्र० शीरा नियंत्रण अधिनियम, थाना-बंथरा, जनपद-लखनऊ के अभियोग में आख्या प्रस्तुत की गयी कि आबकारी टीम द्वारा फर्म के परिसर की तलाशी के दौरान लगभग 3400 घन फीट अवैध शीरा बरामद हुआ। मौके पर मौजूद सुपरवाइजर द्वारा शीरा भण्डारण से सम्बन्धित प्रपत्र उपलब्ध नहीं करा सकने के कारण अवैध शीरा/पशु आहार से परीक्षण हेतु नमूना लेकर नियमानुसार जब्त/सील किया गया है। फर्म द्वारा अवैध शीरा भण्डारण किया गया है। फर्म की तलाशी के दौरान आबकारी टीम द्वारा बरामद अवैध शीरा/ सामग्री से परीक्षण हेतु नमूना नियमानुसार लिया गया है।

उपरोक्त प्रार्थनापत्र के सम्बन्ध में जिला आबकारी अधिकारी लखनऊ द्वारा आख्या प्रस्तुत की गयी कि बरामद शुदा तरल पदार्थ का एक टैंक खुले परिसर में अवस्थित है जबकि दूसरा लोहे का टैंक व मिक्सिंग मशीन गोदाम के अन्दर अवस्थित है, जो सभी आपस में पाइप लाइन से जुड़े हुये हैं। बरामदशुदा माल मुकदमाती के खुले में होने के कारण उसे पृथक से सील किया जाना संभव नहीं था एवं इकाई के परिसर/गोदाम को खुला छोड़ देने पर माल मुकदमाती के खुर्द-बुर्द

हेने की प्रबल संभावना थी, जिसके कारण बरामदगी स्थल कनक कैटल फीड्स के गोदाम व परिसर को तात्कालिकता के आधार पर सील किया गया, जिससे पकड़े गए अभियोग व साक्ष्यों की शुचिता पर प्रतिकूल प्रभाव न पड़े। चूंकि उक्त अभियोग विवेचनाधीन स्तर पर होने के कारण प्रकरण में माननीय न्यायालय में अद्यतन आरोप पत्र दाखिल नहीं किया गया है इसलिए उक्त परिसर खोले जाने से माल मुकदमाती खुरद-बुर्द होने एवं साक्ष्यों के प्रभावित होने की प्रबल संभावना है। उपर्युक्त के दृष्टिगत न्यायहित में कनक कैटल फीड्स गोदाम व परिसर को खोला जाना उचित नहीं है।

सभी पक्षकारों को सुना तथा प्रार्थनपत्र व प्रार्थनापत्र के साथ संलग्न प्रपत्रों का सम्यक अवलोकन किया।

अवलोकन से विदित होता है कि जिला आबकारी अधिकारी द्वारा अपनी आख्या दिनांक 16.08.2024 में यह कथन किया गया है कि चूंकि उक्त अभियोग विवेचनाधीन स्तर पर होने के कारण प्रकरण में माननीय न्यायालय में अद्यतन आरोप पत्र दाखिल नहीं किया गया है। इसीलिए उक्त परिसर खोले जाने से माल मुकदमाती खुरद-बुर्द होने एवं साक्ष्यों के प्रभावित होने की प्रबल संभावना है। उपर्युक्त के दृष्टिगत न्यायहित में कनक कैटल फीड्स गोदाम व परिसर को खोला जाना उचित नहीं है। न्यायालय संपूर्ण पत्रावली के अवलोकन से तथा आख्या दिनांकित 16.08.2024 से यह पाती है कि प्रस्तुत प्रकरण में अभी विवेचना प्रचलित है व आरोप पत्र दाखिल नहीं हुआ है। उक्त के अनुक्रम में न्यायालय कम्पनी के परिसर को डी-सीज किया जाना उचित नहीं पाती है। अतः प्रार्थी कनक कैटल फीड्स प्रा०लि० द्वारा निदेशक कृष्ण कुमार अग्रवाल पुत्र श्री ओम प्रकाश अग्रवाल, निवासी - आर-74 नेहरू इन्क्लेव बिहाइण्ड फन माल गोमतीनगर, थाना गोमतीनगर, जनपद लखनऊ की ओर से अवमुक्ति प्रार्थना पत्र अन्तर्गत धारा - 497 बी०एन०एस०एस० निरस्त किए जाने योग्य है।

आदेश

प्रार्थी कनक कैटल फीड्स प्रा०लि० द्वारा निदेशक कृष्ण कुमार अग्रवाल पुत्र श्री ओम प्रकाश अग्रवाल, निवासी - आर-74 नेहरू इन्क्लेव बिहाइण्ड फन माल गोमतीनगर, थाना गोमतीनगर, जनपद लखनऊ की ओर से अवमुक्ति प्रार्थना पत्र अन्तर्गत धारा -497 बी०एन०एस०एस०, निरस्त किया जाता है। "

4. Vide order 20.08.2024, quoted above, the Magistrate has rejected the application preferred by the applicant namely Kanak Cattle Feeds Pvt. Ltd. (in short 'Company') registered under the Companies Act, 1956 having its registered office at Plot No. 750 Gram Katola, Bani Mohanlalganj, By-pass Road, Lucknow, engaged in the business of manufacturing and selling of 'Cattle Feed' and this Company is also registered with the Government of India under the Ministry of Micro, Small and

Medium Enterprises. It would be apt to indicate here that these facts are not in issue.

5. It is stated that Magistrate, after considering the averments made in the application under Section 497 B.N.S.S. preferred by the applicant-Company and also the instructions placed before it by the prosecution, rejected the application broadly on the ground that investigation is in progress and till date charge-sheet has not been filed and as such, it would not be proper to seize the premises of the applicant-Company.

6. Brief facts of the case are to the effect that on 15.07.2024 the Excise Inspector namely Ms. Sunita Ojha alongwith officials of the Excise Department as also Police Personnel entered into the premises of the applicant-Company situated at the address indicated above for inspection. Where on being found 'Sheera', which is required for manufacturing the 'Cattle Feed', the license/permit related to the same was demanded and in response, the person present in the premises namely Aditiya Thakur, Supervisor of the Company, failed to produce/place the same and taking note of the same, the Excise Inspector Ms. Sunita Ojha, took sample of 'Sheera' available from the tanks situated in the premises of the applicant-Company and also of 'Cattle Feed' and lodged the FIR on 15.07.2024 at about 10:39 hours, which was registered as FIR/Case Crime No. 0171 of 2024.

7. It would be apt to indicate that Excise Inspector Ms. Sunita Ojha also seized the premises of the applicant-Company on the said date i.e. 15.07.2024.

8. According to this FIR Abhishek Agarwal, Aditiya Thakur and Pushpendra Singh are the accused, in relation to the offence indicated above.

9. The person namely Aditiya Thakur, who was present in the premises was arrested, has already been released on bail. Other accused namely Abhishek Agarwal and Pushpendra Singh have been served with the notice as required under Section 35(A) of B.N.S.S. and accordingly they have not been arrested.

10. After the aforesaid, the applicant-Company preferred an application under Section 497 of B.N.S.S. duly supported with an affidavit, with a prayer to deseized the premises. The relevant paragraphs of the same are extracted hereinunder:

"5. That it has already been stated the Applicant Company in engaged in manufacture of cattle feed. And, the process of manufacturing cattle feed involves use of rab or sheera. Therefore, the Applicant Company used to purchase and store rab or sheera for the aforesaid manufacturing purposes in a completely lawful manner.

6. That the Applicant Company has been granted requisite license to store and use sheera by the Office of SheeraNiyantaran and Excise Commissioner and, the same is evident from the perusal of the order of Additional Excise Commissioner (Utpadan) dated 28.05.2019, whereby, the Applicant Company has been permitted to consume 19440 quintal of sheera per year. Copy of the Certificate dated 28.05.2019 of Additional Excise Commissioner (Utpadan) is being annexed herewith as Annexure No.2.

7. That the in view of the facts stated hereinabove, particularly, grant of requisite license for consumption of sheera by the Applicant Company and its registration with the Department of Excise for consumption of molasses clearly signify that the seizure of the Applicant's premises as also registration of FIR are unwarranted. Since the Applicant Company has complied with necessary legal requirements/license for usage of sheera no crime whatsoever has been committed nor the offences alleged seem to be

attracted.

8. That the excise authorities have failed to comply with statutory rules while conducting search and drawing samples from the material recovered viz. sheera and cattle food. Perusal of the FIR reveals that the authorities have drawn aforesaid samples in triplicates (three each) but have failed to provide one of the samples to the accused and the even the FIR does not mention the handing over the sample to the accused. In the aforesaid regard, it is apt to refer to Rule 36(1) of the Rules of 1974 which mandate that one of the samples should be given to the accused. Thus, the process of recovery and seizure are both vitiated.

9. That the entire exercise of conducting seizure and lodging of FIR is an outcome of malice held by Excise Inspector, Sector 11, Lucknow and her subordinates.

10. That at this juncture, it is pertinent to submit that Excise Inspector, Sector 11, Lucknow, Principal Excise Sepoy, Sector-11 and some police personnel visited the premises of Applicant Company on 12.07.2024 at about 11 am and started inspection of the same during which they were shown the license for storage and use of sheera, however, they threatened the deponent with dire consequences of sealing the premises stating that illegal activities are being conducted there. Yet, the illicit demands of the informant and her subordinates continued unabated and as deponent failed to yield to their demands, the malicious exercise of present seizure and lodgement of FIR was undertaken on 15.07.2024.

11. That the aforesaid fact of illicit demands was intimated by the Applicant vide his letter dated 16.07.2024 addressed to Station House Officer, Banthra, Lucknow and also to the District Excise Officer vide letter dated 23.07.2024. Copy of the letter dated 16.07.2024 and 23.07.2024 of Sri Krishnan Kumar Agarwal is being annexed herewith as Annexure No.3 & 4.

12. That Deputy Excise Commissioner (Administration), Office of Excise Commission, Uttar Pradesh having been apprised of the aforesaid fact of Sunita Ojha, Excise Inspector (Informant) and Sri Sumant Mishra, Principal Excise Sepoy demanding bribe took serious note of it. And, vide separate orders dated 15.07.2024 has suspended Sunita Ojha, Excise Inspector and Sri Sumant Mishra, Principal Excise Sepoy and initiated departmental inquiry against them for demanding illicit gratification. Further, the suspension orders categorically mention that Sunita Ojha and Sumant Mishra have been found prima facie guilty of misconduct for illegally demanding money

from the deponent. Copies of suspension orders dated 15.07.2024 passed by the Deputy Excise Commissioner (Administration), Office of Excise Commission, Uttar Pradesh are being annexed herewith collectively as Annexure No5. The Applicant informed to the District Excise officer about the occurrence and demand made by the Excise Inspector on the same day but he was asked to give it in writing.

13. That the aforesaid fact of suspension of Sunita Ojha and Sumant Mishra, Principal Excise Sepoy and initiation of departmental inquiry against them unequivocally indicates that the prosecution story is false. It further reveals that informant held malice against the deponent for not giving in to her illicit demands and consequently she got the FIR lodged while conducting seizure of premises of the Applicant Company.

14. That Section 497(3) BNSS provides that property seized shall be photographed and video-graphed and after the same, the Ld. Court shall pass an order directing disposal, destruction, confiscation or delivery of property within thirty days. As of now, procedure under Section 497(3) BNSS has not been complied with.

15. That as such it is mandatory that Section 497(3) BNSS shall be complied with by causing photograph/ videography of the property in question and, thereafter, order for disposal, destruction, confiscation or delivery be passed within the stipulated time period as per Section 497(5) BNSS."

11. From the above quoted paragraphs of the affidavit particularly paragraphs 12 & 13 thereof as also Annexure No. 11 of this application, it is apparent that the Officer-Ms. Sunita Ojha, who lodged the FIR, and one Sumant Mishra, Principal Excise Officer, have been suspended.

12. It also appears from the record that above named persons have been suspended on being found prima facie guilty of misconduct, which relates to the action taken by them against the applicant-Company.

13. Upon the application preferred under Section 497 B.N.S.S. by the applicant-Company, the report was called upon by the

Court and in response, the District Excise Officer submitted a report dated 14.08.2024. The trial court thereafter passed the impugned order dated 20.08.2024, the relevant of which has already been quoted above.

14. In the aforesaid background of the case, the present application has been filed.

15. In nutshell, it is stated before this Court that if this Court declines to interfere in the instant matter then in that eventuality the perishable property including 'Cattle Feed' and 'Rab' available in the premises of the applicant-Company would be spoiled and would be of no use and as such the indulgence of this Court is required.

16. Sri Sushil Kumar, Advocate assisted by Sri Kazim Ibrahim, Advocate, learned counsel for the applicant submitted as under:-

(i) The trial court while passing the order impugned dated 20.08.2024 failed to take note of the language couched under Section 497 B.N.S.S. It is for the reason that the trial court rejected the application on the premise/ground that the investigation is under process and charge sheet has not been filed till date.

(ii) In exercise of power under Section 497 B.N.S.S., the court concerned or the Magistrate is empowered to release the property including the perishable property pending conclusion of the investigation, enquiry or trial.

(iii) In Section 451 Cr.P.C. (now repealed), the expression "investigation" has not been indicated, as such, after coming into force of the provisions of B.N.S.S. i.e. w.e.f. 01.07.2024, the court concerned or the Magistrate is fully empowered to release the property particularly the property which is subject to speedy and natural decay even during pending investigation. Thus, the trial court erred in law and fact both in rejecting the application of the applicant under Section 497 B.N.S.S.

(iv) The trial court also did not consider the specific averments made in the affidavit filed in support of the application related to permit/license under the Act of 1964 and also the fact related to permit/license in regard to manufacturing of 'Cattle Feed', annexed as Annexure Nos. 3 and 4 to the present application, which were placed before the Magistrate.

(v) The procedure indicated under Section 105 B.N.S.S. was also not followed, as per which, the concerned officer is under obligation to record search and seizure through audio, video and electronic means preferably by using mobile phone.

17. Sri Pramod Kumar Shukla, learned AGA opposed the present application.

18. Considered the aforesaid and perused the record.

19. The facts aforesaid including the facts related to valid permit/license in regard to manufacturing of "Cattle Feed" and permission to use/consume Molasses/Sheera to the limit of 1,94,440 Quintals, which is required for manufacturing the

"Cattle Feed", etc. are not in issue. It is for the reason that impugned order dated 20.08.2024 is not based on the same.

20. The order dated 20.08.2024, under challenge, to the view of this Court is based on Section 497 B.N.S.S. and the report dated 16.08.2024 of the District Excise Officer and as such it would be apt to refer the relevant provisions on the issue involved in this case.

21. Section 451 Cr.P.C. reads as under:-

"451. Order for custody and disposal of property pending trial in certain cases

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.---For the purposes of this section, "property" includes--

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

22. Section 497 B.N.S.S. reads as under:-

Section 497 - Order for custody and disposal of property pending trial in certain cases

(1) When any property is produced before any Criminal Court or the Magistrate empowered to take cognizance or commit the case for trial during any investigation, inquiry or trial, the Court or the Magistrate may make such order as it thinks fit for

the proper custody of such property pending the conclusion of the investigation, inquiry or trial, and,

if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court or the Magistrate may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—

(a) property of any kind or document which is produced before the Court or

which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

(2) The Court or the Magistrate shall, within a period of fourteen days from the production of the property referred to in sub-section (1) before it, prepare a statement of such property containing its description in such form and manner as the State Government may, by rules, provide.

(3) The Court or the Magistrate shall cause to be taken the photograph and if necessary,

23. From a conjoint reading of the aforesaid provisions indicates that the same are similar. It further appears that in exercise of power under Section 497 B.N.S.S. the concerned court or the Magistrate is empowered to release the property even during pending the conclusion of the "investigation" which power was earlier not available when the Cr.P.C. was enforced.

24. The property in the seized premises of the applicant is perishable property and the same has not been disputed by learned AGA.

25. In the case of ***Sunderbhai Ambalal Desai Versus State of Gujarat; (2002) 10 SCC 283***, on the subject, the Hon'ble Apex Court observed as under:-

"7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

- 1. owner of the article would not suffer because of its remaining unused or by its misappropriation;*
- 2. court or the police would not be required to keep the article in safe custody;*
- 3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*
- 4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.*

8. The question of proper custody of the seized article is raised in a number of matters. In Basavva Kom Dyamangouda Patil v. State of Mysore [(1977) 4 SCC 358 : 1977 SCC (Cri) 598] this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: (SCC p. 361, para 4)

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of

the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

(emphasis supplied)

9. *The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.*

10. *To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.*

Valuable articles and currency notes

11. *With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.*

12. *For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:*

- (1) preparing detailed proper panchnama of such articles;*
- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and*
- (3) after taking proper security.*

13. *For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.*

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstances, the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed.

Vehicles

15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over

possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

26. In view of the law laid down it is apparent that it is a general rule that case property should be released. It should not to be retained in custody of the court or the police for any time longer than what is absolutely necessary and it should be directly or indirectly disposed of and court must pass order for its disposal. Further where the property is subject to speedy and natural decay, resulting in diminishing its value should not be kept lying unattended.

27. Considering all the facts and attending circumstances of the case to the view of this Court the Magistrate ought to have de-seized/released the premises in issue including perishable property therein in favour of the applicants after taking

adequate surety bond after getting its value assessed by a competent authority and Magistrate may have imposed other conditions which it thinks necessary. Thus, in the facts of the case after taking note of the observations of Hon'ble Apex Court in the judgment referred above, this Court is of the view that the Magistrate has failed to exercise his jurisdiction properly.

28. Accordingly, the present application is ***allowed***. The impugned order dated 20.08.2024 passed by Special Chief Judicial Magistrate (Custom), Lucknow in Case Crime No. 171 of 2024 (Kanak Cattle Feeds Pvt. Ltd. Versus State), under Sections 318(4)/319(2)/183 BNS and Section 11, 12 of UP Sheera Niyantaran Adhiniyam, 1964, P.S.- Banthara, District-Lucknow, is hereby set-aside. The learned Special Chief Judicial Magistrate (Custom), Lucknow is directed to de-seize/release the property in issue including perishable property therein, in favour of applicant after taking personal bond and one surety bond of adequate amount. The learned Magistrate may get the value of the property assessed by any competent authority and fix the amount of personal bond and surety bond accordingly and may also impose other conditions he deems just and necessary.

Order Date :- 05.09.2024

Jyoti/-