

Court No. - 71

Case :- APPLICATION U/S 482 No. - 43868 of 2024

Applicant :- Om Narayan Kushwaha

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ram Prasad Kanaujiya

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ram Prasad Kanaujiya, the learned counsel for applicant, the learned A.G.A. for State-opposite parties-1 and 2 and Mr. Avinish Jaiswal, Advocate, holding brief of Mr. Atharva Dixit, the learned counsel representing first informant/opposite party-3.

2. This application under section 482 Cr.P.C. has been filed by applicant Om Narayan Kushwaha, with the following prayer:

"It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and set aside the judgment and order dated 06.11.2024 passed by learned Additional District and Session Judge/F.T.C. Ramabai Nagar (Kanpur Dehat) in C.M.C. no. 636 of 2024 (Om Narayan Kushwaha Vs. State of U.P.) and order dated 28.08.2023 passed by learned Chief Judicial Magistrate Kanpur Dehat rejecting the application for release of vehicle seized in Case Crime No.90 of 2023, Under Section 302, 201 and 120-B I. P.C., Police Station Sikandra, District Kanpur Dehat, and direct the concerned authority to release the Vehicle No.U.P.77 A.J. 1526 XUV300 in favour of the applicant, otherwise the applicant shall suffer irreparable loss and injury

And/ or pass such other and further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

3. Record shows that in respect of an incident which is alleged to have occurred on 11.6.2023, a belated F.I.R. dated 12.6.2023 was lodged by first informant/opposite party-3 Hari Om Tripathi and was registered as Case Crime No. 90 of 2023, under sections 302, 201 and 120B IPC, Police Station-Sikandra, District Kanpur Dehat. In the aforesaid F.I.R two persons namely, Anuj Yadav and Pradeep Yadav, have been nominated as named accused.

4. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. During course of investigation, he gathered information that vehicle bearing Registration No. UP 77 A.K. 1526 XUV 300 was used in the commission of crime in question. Accordingly he seized the same.

5. On the basis of material collected by Investigating Officer, during course of investigation, he came to the conclusion that complicity of named accused Anuj Yadav and not named accused Suraj is prima facie established in the crime in question. He, accordingly submitted the charge sheet/police report dated 11.9.2023 in terms of Section 173(2) Cr.P.C. whereby not named accused Suraj and named accused Anuj Yadav were charge-sheeted under sections 302, 201 and 120-B IPC.

6. During course of investigation, applicant filed a release application dated 28.8.2023 in terms of Sections 451/457 Cr.P.C. before Chief Judicial Magistrate, Kanpur Dehat, seeking release of the disputed vehicle bearing Registration No. UP 77 A.K. 1526 XUV 300. After aforementioned release application was filed a report was submitted by the police station concerned, wherein it was stated that the disputed vehicle was used in the commission of crime in question. The FSL report regarding the disputed vehicle has already been received. No further proceedings in respect of disputed vehicle is pending at the concerned police station. The involvement of the owner of the disputed vehicle has not been established in the crime in question, during course of investigation. However, investigation is still pending against accused. Upon receipt of the aforesaid report, the Chief Judicial Magistrate, Kanpur Dehat examined the release application filed by applicant. The same was ultimately rejected, vide order dated 28.8.2023. The Chief Judicial Magistrate, concluded that since the disputed vehicle is case property, and has been used in the commission of crime, which is murder and matter is till subjudice before the Court, therefore, no good ground exists to release the disputed vehicle.

7. Feeling aggrieved by the above order dated 28.8.2023, applicant filed a revision before the District and Sessions Judge, Ramabai Nagar (Kanpur Dehat). The same was registered as Criminal Revision No. 189 of 2023 (On Narayan Vs. State of U.P.). However, aforesaid revision filed by applicant was also dismissed by the Sessions Judge, Kanpur Dehat, vide order dated 06.10.2023. The Sessions Judge, after considering the facts and circumstances of the case, concurred with the findings and reasons recorded by Chief Judicial Magistrate in the order dated 28.8.2023 and therefore arrived at the conclusion that no illegality has been committed by the Chief Judicial Magistrate in rejecting the release application filed by applicant.

8. Subsequently the matter was committed to the Court of Sessions. Resultantly, applicant filed second release application before Additional District Judge/FTC (14th Pay Commission), Ramabai Nagar (Kanpur Dehat), which was registered as CMC No. 636 of 2024. However, the subsequent release application

filed by applicant was also rejected by Court below on the ground that since the release application is second release application, therefore, same is not maintainable.

9. Thus feeling aggrieved by above orders, applicant, who is registered owner of the disputed vehicle bearing Registration No. UP 77 AK 1526 XUV 300, has approached this Court by means of present application under section 482 Cr.P.C.

10. Learned counsel for applicant submits that applicant is neither named in the F.I.R. nor he has been charge sheeted by Police. However, according to prosecution, the said vehicle is alleged to have been used in the commission of crime by driver of applicant. He further submits that since the police report/charge sheet in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against charge sheeted accused stands crystalized. In view of above, no good ground exists in not releasing the disputed vehicle. The disputed vehicle is lying at the concerned Police station in an open place and its value is deteriorating. The custody of disputed vehicle is not necessarily required for conducting the trial of concerned case crime number. The FSL report in respect of the disputed vehicle has already been received. He, therefore, submits that orders impugned are liable to be quashed and the disputed vehicle is liable to be released in favour of applicant. To buttress his submission, the learned counsel for applicant has relied upon the judgement of Supreme Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, (2002)10 SCC 283**,. Reliance is placed upon paragraphs 6, 7, 10, 14, 15, 16 and 17 of the said judgment. For ready reference, the same are reproduced hereinunder:-

"6. In our view, the powers under Section 451 Cr.P.C. 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 panchanama before handing over possession of 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 properly 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.

7. The question of proper custody of the seized article is raised in number of matters. In Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr., [1977] 4 SCC 358, 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-

"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."

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.

To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.

10. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs or 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 Cr.P.C. to impose any other appropriate condition.

14. 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.

15. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by 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 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 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.

16. For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may 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.

17. Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Cr.P.C. 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."

11. Per contra, the learned A.G.A. for State-opposite party-1 and 2 and Mr. Avinish Jaiswal, Advocate, holding brief of Mr. Atharva Dixit, the learned counsel representing first informant/opposite party-3. have vehemently opposed the present application. They submit that since the vehicle in dispute was used in the commission of crime, giving rise to criminal proceedings against charge sheeted accused, therefore, no good ground exists to release the disputed vehicle. The disputed vehicle is case property and the matter is still subjudice before Court. As such, no such ground has emerged so as to release the dispute vehicle during the pendency of trial. They, therefore, contend that no good ground is made out in present application warranting release of the disputed vehicle. As such, the present application is liable to be dismissed.

12. Having heard Mr. Ram Prasad Kanaujiya, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and 2, Mr. Avinish Jaiswal, Advocate, holding brief of Mr. Atharva Dixit, the learned counsel representing the first informant/opposite party-3 and upon perusal of record, this Court finds that it is an undisputed fact that applicant is the registered owner of the disputed vehicle. Applicant is neither named in the F.i.R. nor he has been charge sheeted by Police. It is also an admitted fact that FSL report has been received by police in respect of the disputed vehicle. No such circumstance has emerged on record on the basis of which it can be conclusively concluded that custody of disputed vehicle is necessarily required during the pendency of trial.

13. In view of the discussion made above, the observations made by Apex Court in **Sunderbhai Ambalal Desai (Supra)** as noted herein above, stand clearly attracted. As a result, the

present application succeeds and is liable to be allowed.

14. It is, accordingly, **Allowed**.

15. The order impugned dated 06.11.2024 passed by Additional District and Sessions Judge/F.T.C., Ramabai Nagar (Kanpur Dehat) in C.M.C. no. 636 of 2024 (Om Narayan Kushwaha Vs. State of U.P.) and order dated 28.08.2023 passed by learned Chief Judicial Magistrate Kanpur Dehat rejecting the application for release of vehicle seized in Case Crime No.90 of 2023, Under Section 302, 201 and 120-B I. P.C., Police Station Sikandra, District Kanpur Dehat, shall stand quashed.

16. The release application filed by the applicant shall stand allowed. Court below shall release the disputed vehicle bearing Registration No. UP 77 A.K. 1526 XUV 300 after undertaking necessary verification exercise in accordance with law within a period of one month from the date of production of a certified copy of this order.

Order Date :- 17.1.2025

Arshad