

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(CRL) No.854/2011**

Date of Reserve: 07.09.2015

Date of Decision: 17.09.2015

RAJEEV @ RAJ Petitioner
Through: Mr.Vijay Aggarwal, Mr.Chaitali Jain, Mr.
Arjun Taneja and Mr.Mudit Jain, Advocates.

versus

STATE Respondent
Through: Mr.Raghuvinder Verma, APP.
SI Virendra Singh, Crime Branch, Kotwali,
Delhi.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The petitioner has challenged the order dated 14.3.2011 passed by the learned ACMM (South), Saket Courts, New Delhi in connection with FIR No.5/2010 (P.S.Crime Branch) whereby the prayer made on his behalf for release of his vehicle (Mahendra Scorpio) bearing registration No.WB-02Q 1645 has been refused.
2. The case of the petitioner is that the registered owner of vehicle in question namely Meenu Shah has executed a mandate of transfer of ownership of the vehicle in favour of the petitioner. The petitioner was not given the vehicle on superdari as it would have amounted to adjudicating the claim or title over the said property.

3. It has been argued on behalf of the petitioner that the powers under Sections 451 and 457 of the Code of Criminal Procedure need be exercised expeditiously and judiciously which would serve various purposes namely: the owner of the vehicle would not suffer because of the same remaining unused or by its misappropriation; the investigating agency would not be required to keep the article in safe custody; and if proper panchnama before handing over the possession of vehicle is prepared, the same could be used in evidence instead of its production before the Court during the trial.

4. The facts giving rise to the seizure of the aforesaid vehicle which is sought to be released in favour of the petitioner, is as follows.

5. One K.P.Singh lodged an FIR No.5/2010 (P.S.Crime Branch, Nehru Place) under Sections 406/42/120B IPC against the accused persons including the petitioner aforesaid alleging that he was cheated of huge amount of money on the pretext of providing admission to his son and nephew in BIT Mesra (Ranchi) on Governor's quota. Aforesaid K.P.Singh, on false assurance of the admission, parted with huge amount of money but admission to his son and nephew could not be secured.

6. During the course of investigation of the present case in which the petitioner was an accused, the aforementioned vehicle and other items were recovered from the possession of the accused persons.

7. The aforesaid vehicle was stated to have been purchased by the petitioner on payment of consideration money from one Meenu Shah.

8. The release of the vehicle in favour of the petitioner was opposed on the ground that it was purchased out of ill-gotten money,

money of which the complainant was fobbed off. In that view of the matter, it was argued on behalf of the complainant that the vehicle could not be released even on superdari to the petitioner.

9. Learned ACMM, vide order dated 14.3.2011, for the reason that the vehicle has been purchased out of the money which was cheated from the complainant of FIR No.5/2010, refused to release the vehicle in favour of the petitioner.

10. Learned counsel for the petitioner submitted that the challenge to the aforesaid order has been made by way of present writ petition and not by way of a revision as release or refusal to release of his vehicle on superdari would only be, an interlocutory order. If the prayer would have been allowed, the superdar would have held the vehicle at the behest of the Court and the vehicle could have been directed to be surrendered at any time when the Court required. In that view of the matter, the order, being an interlocutory order, could not have been revised against, considering the bar under Section 397(2) of the Code of Criminal Procedure.

11. It has been further argued that the seizure of the vehicle itself was illegal as the vehicle could not have been seized under Section 102 of the Code of Criminal Procedure.

12. Section 102 of the Code of Criminal Procedure reads as hereunder:-

Power of police officer to seize certain property

1. Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence.

2. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

3. Every police officer acting under Sub-Section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

Provided *that where the property seized under Sub-Section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.*

13. From a reading of this Section, it is obvious that a police officer in the course of investigation can seize any property under Section 102 of the Cr.P.C, if such property is alleged to be stolen or suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence which is being investigated. A property which is not the subject matter of suspected commission of offence which is being investigated cannot be seized. Under Section 102 of the Code of Criminal Procedure, a police officer can seize such property which is covered by Section 102 (1) of the Cr.P.C and no

other.

14. It is also submitted on behalf of the petitioner that it cannot be asserted or argued that the vehicle was purchased out of the money which was cheated at the instance of the petitioner.

15. The petitioner places reliance on the case of **His Holiness Sri Kanchi Kamakoti vs. The State of Tamil Nadu**, 2005(3) CRJ 375 wherein the scope and power of Section 102 of the Code of Criminal Procedure has been dealt with. Only two categories of properties could be seized namely property which is alleged or suspected to have been stolen or which may be found under such circumstances which create suspicion of the commission of any offence. No other category could be included or deemed to be included as may otherwise be possible in an expansive definition by using certain other expressions in addition such as “as the case may be”, “as the authorities deem fit and necessary” etc., which may render the provision an inclusive and illustrative one and not an exhaustive one. The language of Section 102 of the Cr.P.C is very clear and it is clearly an exhaustive provision, as it should be. Otherwise, the provision would be arbitrary and unconnected to the offence and would be liable to be misused for ulterior purposes. It is precisely for this reason that by special design, the parliament has restricted the power under Section 102 of the Code of Criminal Procedure to specific and narrow limits.

16. Without going into such issues in detail, what is necessary to point out is that the scheme of Sections 451 and 457 of the Code of Criminal Procedure postulates that where the property which is the subject matter of an offence is seized by the police, the same should

not be retained in the custody of the Court or the police for a long time. If the property remains with the police authorities, they would be deemed to be under an entrustment of such property with the caveat that such property would be restored to the original owner if the necessity of retaining the same ceases. The property so seized could be returned either during an enquiry or trial and especially so if the property is subject of speedy and natural decay. One such way in which the purpose of enacting Sections 451 and 457 Cr.P.C could be sub-served is to release the property and especially a vehicle, after prima facie inquiring about the possession and title to the aforesaid vehicle in favour of the best claimant on superdari. The whole purpose would be defeated if unusual delay is caused in dealing with such applications under Sections 451 or 457 of the Code of Criminal Procedure. Sections 451 and 457 read as follows:-

“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.

457. Procedure by police upon seizure of property

1. Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

2. If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

17. If the materials on record indicate that the vehicle belonged to the petitioner, the same could be released to him but only after taking proper security that the vehicle would be produced if required at the time of trial.

18. It has been submitted on behalf of the petitioner that Magistrate, had no option but to release the vehicle in his favour as the transport documents indicate the transfer of the said vehicle in his name. There could have been no direction for disposal of the vehicle as a case property otherwise, as disposal of case property is governed by Prevention of Money Laundering Act, 2002, where only, the Court has been vested with such powers of disposing of the case property.

19. It has been submitted on behalf of the State that claim of another person namely the complainant/K.P.Singh regarding the release of vehicle in his favour is still pending adjudication.

20. Under such circumstances, the order dated 14.3.2011 is set aside.

21. The petitioner is directed to file a fresh application for release of the vehicle before the learned ACMM within a period of 15 days of the passing of the order. On filing of such application, within the specified time, the concerned ACMM shall dispose of the application filed by the petitioner as well as the pending application of Mr.K.P.Singh for the release of the vehicle in his favour, in accordance with law and what has been stated above.

22. The petition is disposed of in terms of the aforesaid.

ASHUTOSH KUMAR, J

SEPTEMBER 17, 2015

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