

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 641 of 2016

- Madan Agrawal, S/o Shri Shyamlal Agrawal, Aged About 40 Years, R/o Agrasen Ward, Barejpara Ambikapur, Tehsil Ambikapur, Revenue And Civil Distt. Surguja Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through District Magistrate Jashpur, Rev. and Civil Distt. Jashpur Chhattisgarh.
2. Station House Officer Pathalgaon, Rev. and Civil District Jashpur Chhattisgarh.
3. Tehsildar Pathalgaon Revenue and Civil Distt. Jashpur Chhattisgarh.
4. Mining Officer Mining Department Jashpur, Revenue and Civil Distt. Jashpur Chhattisgarh.

---- Respondents

For Petitioner :	Shri Surfaraj Khan, Advocate
For Respondent/State :	Shri Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board By

18/07/2016

1. The present petition under Section 482 of Cr.P.C. has been filed seeking for quashment of order dated 13/06/2016 passed by the Additional Sessions Judge, Kunkuri, District Jashpur (C.G.) in Criminal Revision No. 6/2016 by the said order of rejection the revisional Court has affirmed the order passed by the Judicial Magistrate First Class, Patthalgaon on 04/04/2016 rejecting the application under Section 457 of the Cr.P.C.
2. The Tahsildar has said to have seized the vehicle i.e. Truck No.C.G.-15 A/8068 on 14/01/2016 while the truck was being transported loaded with

quartz stone, which is a minor mineral. The case of the present petitioner is that he had subsequent to the seizure of the vehicle made three applications to the Court below by moving an application under Section 457 of the Cr.P.C. for release of the vehicle, but each time the same has been rejected on the ground that the application under Section 457 of the Cr.P.C. is not maintainable as no case has been made out registered till now and therefore the applicant prays for release of the said vehicle.

3. The State counsel appearing before the Court below submitting that instant vehicle has been seized is violation of Section 247 of the Land Revenue Code. The State counsel is not able to provide any assistance to the Court to show as to under what authority of law the vehicle was seized and why said application would not have been maintainable before the Court below and also to a query as to before whom should the applicant make such application the State counsel could not give any reply.
4. Perusal of the return of the State reflects that it also does not deal with these specific reply on merits, grounds and contentions put forth by the counsel for the petitioner in his petition.
5. In absence of proper assistance and proper reply being supplied by the State in support of his contention, this Court is proceeding to decide the case on merits.
6. The Supreme Court in paragraphs 7 and 17 of ***Sunderbhai Ambalal Desai Vs. State of Gujrat, reported in 2002 (10) SCC 283*** has laid down the guiding principles for releasing the vehicle seized by police. For ready reference the relevant portion is reproduced below:-

“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.”

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17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the polices 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.”

7. Similar stand has also been taken by the Supreme Court recently in the case of **Multani Hanifbhai Kalubhai Vs. State of Gujrat & Another**, reported in **2013 (3) SCC 240**, which was a judgment passed under the same law enacted in the State of Gujrat, wherein the Supreme Court has expressed that it is not advisable to keep the seized vehicle in the police station in open condition which is prone to natural decay on account of weather conditions for a long period.

8. In the instant case, there is no criminal case registered whatsoever and neither has any confiscation proceedings initiated and therefore no useful purpose would be served if the vehicle is allowed to get exposed in the extreme weather conditions at the police station. On the contrary, if the vehicle can be released to the Petitioner subject to certain conditions he can use it so that the vehicle does not become junk after some time.

9. For the foregoing reasons, it is directed that the seized vehicle belonging to the Petitioner, i.e., Truck, bearing Registration No. CG15-A/8068, be released to the Petitioner upon his furnishing an

appropriate bond and guarantee to the satisfaction of the Court below for return of the said vehicle, if required at any point of time. In the bond he shall give an undertaking that he shall not change the ownership of the vehicle nor shall he change the colour of the vehicle neither shall he create a third party right or interest over the said vehicle. He shall also undertake that he shall produce the vehicle as and when required by the prosecution during the course of investigation, trial and even at the appellate stage. He shall further undertake to produce the vehicle to any competent authority under different statutes as and when required. So far as surety is concerned, it shall be equal to the present day value of the vehicle seized to the satisfaction of the concerned Trial Court.

10.It is also made clear that it is only the vehicle which would be released to the petitioner. The quartz stone in the truck would be unloaded and kept separately and safely by the authorities who have seized the vehicle.

11.With the aforesaid observations, the Criminal Misc. Petition is allowed.

Sd/-

(P.Sam Koshy)
Judge