

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 572 of 2016**

Anil Kumar Das S/o Lelin Kumad Das Aged About 35 Years
R/o Ganeshpur, Police Station Simga, Distt. Balodabazar-
Bhatapara Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through The District Magistrate,
Bemetara, District Bemetara Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. A.S. Rajput, Advocate.
For Respondent/State	:	Mr. R.K. Gupta, Dy. A.G. on advance copy.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**ORDER ON BOARD****25/05/2016**

1. Heard.
2. Issue notice to the State.
3. Mr. R.K. Gupta accepts notice on behalf of the respondent/ State.
4. Also heard on I.A. No.1, for urgent hearing and I.A. No.2, for hearing the case during summer vacation.
5. On due consideration, both are disposed of.
6. Learned counsel for the petitioner submits that looking to the entire facts as emerged in the order dated 11.12.2015 of the Trial Court and the order dated 05.05.2016 of the Revisional Court and the provisions of law, the matter may be heard finally at the motion stage itself for the prayer of the petitioner to invoke the inherent jurisdiction under Section 482 of Criminal Procedure Code.
7. As prayed, heard the matter finally at the motion stage itself.

8. Facts in brief that the vehicle Truck No.CG-13-L-0954 has been seized on 24.05.2015 in Crime No.287/2015 by the Bemetara Police for the offence under Section 4, 6, 11 of the Chhattisgarh Agricultural Cattle Preservation Act, 2004 (for short "the Act of 2004") and also under other Sections of relevant law. The petitioner had filed an application for the *Supurdnama* of the said truck, which was dismissed under the provisions of Section 6 (3) of the Act of 2004 as no vehicle shall not be released by the order of the Court on bond or surety before the expiry of six months from the date of such seizure, thereafter again after the expiry of six months from the date of seizure, the petitioner had filed a repeat application for the *Supurdnama* on said vehicle. The learned Trial Court vide order dated 11.12.2015 held that as per communication received from Bemetara police that the prayer for the confiscation by the Collector is made through Superintendent of Police. Hence as the procedure for confiscation is going on, it would not be correct to release the vehicle on *Supurdnama* hence dismissed the said application. Against the said order, the petitioner had preferred a Criminal Revision No.21/2016 before the Additional Sessions Judge Bemetara (C.G.). Learned Revisional Court vide order dated 05.05.2016 held that as per provisions of Section 6(3) of the Act of 2004, the vehicle shall liable for confiscation at the end of the trial, whereby there is no any provision to apply the discretionary power for release of the said vehicle, hence the order for rejection of prayer to release the said vehicle on *Supurdnama* is appropriate thereby affirmed the order passed by the Court below on a different grounds. Against the said order, the petitioner had preferred instant Cr.M.P. praying that provisions contained in Section 482 of the Code of Criminal Procedure may be invoked and this Court may pass suitable order for *Supurdnama* of the above vehicle.

9. Learned counsel for the petitioner submits that the order passed by the trial Court and also of the Revisional Court is against the provisions of law. The Collector has no role in the confiscation as per provisions. It would be the trial Court alone, who has to decide the confiscation. Further prayed that before the expiry of six months, the vehicle cannot be released on *Supurdnama* thereby deemed that

under the provisions of Chapter XXXIV of the Code of Criminal Procedure, Section 451/ 457 of Cr.P.C., as the case may be, the Criminal Court has jurisdiction to order for custody and disposal of property pending trial. Under the doctrine of disposal of said property on an ad-interim basis, looking to the requirements and other facts hence as the Collector has no say in the confiscation proceedings, appreciation of the Revisional Court is not correct that there is no any jurisdiction to release the said vehicle. On *Supurdnama* with the Trial Court, both the Courts below committed illegality hence order passed by the Trial Court as well as the Revisional Court may be quashed and relief sought may be granted.

10. Learned State counsel opposed the prayer and submitted that the Revisional Court appreciated the entire matter under the relevant provision of Section 6(3) of the Act of 2004 and not committed any illegality, impropriety and incorrectness while rejecting the said revision for the prayer of release of vehicle on *Supurdnama* hence instant Cr.M.P. may be dismissed.

11. For the purposes of appreciation regarding arguments advanced on admission, the instant Cr.M.P. and documents annexed are perused.

12. For the relevance provisions of Section 6(3) of the Act of 2004 is as follows:

“S.6(3) The vehicle or conveyance so seized under sub-Section (2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, whichever is earlier and such vehicle shall also be liable for confiscation at the end of the trial.”

13. For the relevance provisions of Sections 451 and 457 of the Code of Criminal Procedure is as follows :

“S.451 Order for custody and disposal of

property pending trial in certain cases – When any property is produced before any Criminal Court during an 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.

“S.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.”

14. From perusal of the entire Act of 2004, there is no any provision for the proceeding to be initiated by the Collector regarding confiscation of the vehicle seized. In the absence of any provision, the general procedural law shall prevail with this. It would be the trial Court alone, who shall decide the confiscation, though after hearing the parties having interest in a proceeding as per settled law as the vehicle shall be liable for confiscation at the end of the trial. The trial Court has to decide that part in the judgment thereafter for confiscation to initiate a proceeding under the provision of law and

after hearing the parties having interest, the trial Court has to pass an order for the confiscation as there is no any role specified in the entire Act of 2004 regarding proceeding to be initiated and conducted by the Collector and as this was the sole reason for rejecting the application of *Supurdnama*. In the considered opinion of this Court, the trial Court had not passed the order according to law. The same is incorrect, illegal and improper, hence the same is liable to be quashed.

15. So far as the order of the Revisional Court are concerned, the Revisional Court at para 9, it is held that there is no provision for release of the vehicle on *Supurdnama* on discretion with the trial Court and as the vehicle shall be liable for confiscation, hence it would not be proper to give said property on *Supurdnama*. Learned Revisional Court failed to appreciate the procedural provision of Section 451/ 457 of Cr.P.C., as the case may be, whereby and whereunder unless specifically prohibited by any special Act, the regular Criminal Court had jurisdiction to invoke the discretionary power and procedural power in order for custody and disposal of property pending trial. Though very correct the Court below has to pass an order at the conclusion of the trial regarding order of disposal of property under the relevant provision of Section 452 of the Code of Criminal Procedure, but till then Criminal Court had every authority and jurisdiction also the discretion to decide the custody and disposal of property pending trial after due seizure of the police, if no any other prohibitory provision contained in any of the relevant law. After perusal of Section 6(3) of the Act of 2004, it appears that the legislature specifically prohibited the release of the vehicle and conveyance on bond or surety before the expiry of six months from the date of such seizure thereby as per interpretation of the statutory, it would be appropriate to hold that after the expiry of six months from the date of such seizure, the procedural laws i.e. Section 451/ 457 of Cr.P.C. would be applicable and trial Court had every jurisdiction to invoke discretionary power and the procedural power for the release of said vehicle on *Supurdnama* pending trial only. With this, this Court is not agreed with the appreciation of the Revisional Court as held in para 9. In the considered opinion of this Court, the Revisional Court

too committed illegality, impropriety and incorrectness by saying that there is no any discretionary power to the trial Court for the release of said seized vehicle on *Supurdnama*. This Court is of considered view, the appreciation and the order passed by the Revisional Court also is not proper hence the same is also liable to be quashed.

16. On due consideration, the instant Cr.M.P. is hereby disposed of. Order dated 11.12.2015 passed by the Chief Judicial Magistrate Bemetara and order passed by the Additional Sessions Judge Bemetara in Criminal Revision No.21/2016 dated 05.05.2016 are hereby quashed. The petitioner is directed to file an application afresh under the provisions of Section 451 of Cr.P.C. / Section 6(3) of the Act of 2004 before the trial Court. The Trial Court is directed to hear the said application afresh and pass appropriate order in light of the law without being influenced with the order of that Court dated 11.12.2015 and also order dated 05.05.2016 of the Revisional Court. If any such application is filed along with the order of this Court, the trial Court is directed to dispose of the same within 14 working days.

17. With the above directions, the petition is hereby disposed of. The petitioner may file copy of this order along with such interim application under Section 451 of Cr.P.C. for disposal according to law. The trial Court shall dispose of the same as directed. The Registrar (Judicial) is directed to send the copy of this order to the Trial Court immediately through usual and fax mode. The Registrar General is also directed to circulate the copy of this order to Subordinate Judges to High Court for compliance and future guidance.

18. The petition is disposed of.

Sd/-

(Chandra Bhushan Bajpai)

Vacation Judge