

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Miscellaneous Petition No. 950 of 2015**

Smt. Rajiya Bano W/o Modh. Firoz Aged About 31 Years Caste Muslim, R/o Masjid Para, Sundergarh (Orissa). (Registered Owner Of The Vehicle) Through Power Of Attorney Holder - Shamsheer Singh, S/o Lalinder Singh, Caste - Rajput, Aged 32 Years, R/o Khamripara, Post Sundergarh (Orissa).

---- Petitioner

Versus

1. State Of Chhattisgarh Through District Magistrate, Jashpur, Distt. Jashpur Chhattisgarh.
2. Station House Officer Tapkara, Police Station Tapkara, Distt. Jashpur Chhattisgarh.

---- Respondents

For Petitioners:
For State:

Mr. Ajay Ayachi, Advocate
Mr. U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25.04.2016**

1. The present Petition under Section 482 of Cr.P.C. has been preferred challenging order dated 7.9.2015 passed by Additional Sessions Judge, Kunkuri, Distt. Jashpur in Criminal Revision No. 09/2015. By the said impugned order the revisional Court dismissed the revision preferred by the Petitioner upholding order dated 27.06.2015 passed by the Judicial Magistrate First Class, Kunkuri Distt. Jashpur in

Criminal Case No. 270/15 rejecting the application of the Petitioner under Section 451 of Cr.P.C. for getting possession of the truck bearing Registration Number 'OR 16 D-7018.

2. On 03.04.2015 night the aforesaid truck was found by the Police authorities being driven by one Mariyanus Toppo S/o Silbanus Toppo resident of Dandpani, Kinjrikela loaded with 9.85 Ton coal being taken from Kulda, Sundergarh to Kersai. However, on enquiry by the Police authorities the driver of the said truck could not produce any such documents so far as source of loading of the coal nor did he had any proper document to show the destination to where the coal was being taken to. Neither the driver nor the owner of the truck could produce any document to substantiate the coal from where it was laden on the truck and as to where the loaded coal was being dispatched and under whose authority and permission as is required under law. Initially the case under Section 41 (1-4) of Cr.P.C. read with Section 379 of I.P.C. was registered. Thereafter, the vehicle was seized for further investigation. The Petitioner who claims himself as the owner of the truck moved an application under 451 of Cr.P.C. for release of truck on Supurdnama which was initially rejected by the Trial Court on 08.04.2015 on the ground that investigation was going on and charge sheet had not been filed. Subsequently, challan was filed on 02.06.2015. Thereafter, the Petitioner again moved application for release of vehicle under Section 451 of Cr.P.C. seeking for release of

the vehicle on Supurdnama. This application was again rejected by the Trial Court on 27.06.2015. The Trial Court while rejecting the application made a categorical finding that earlier also the application for release of vehicle on Supurdnama was rejected. Initially the Petitioner filed application for release of both, the truck as well as the coal loaded on the truck but subsequently moved application for release of truck only. The trial Court while rejecting the application held that the second application under Section 451 was also being prosecuted through the truck holder and that the owner of the vehicle in fact does not appear to be cooperating with the Police authorities in the course of investigation upon illegal coal which was found on the truck belonging to the Petitioner.

3. The said order dated 27.06.2015 was subjected to Criminal Revision No. 09/2015. The revisional Court vide the impugned order dated 07.09.2015 has found that the Petitioner who claims himself as owner of the vehicle is not cooperating with the investigating agency so far as the source from where the Petitioner got coal loaded on the truck and also not cooperating with the Police authorities to the extent of informing the destination where the coal was being sent illegally. In addition, the Police authorities also found that the documents produced by the driver were fake, which became all the more a ground for the revisional court to reject the application for release of vehicle on Supurdnama.

4. Learned State counsel also relies upon the observations made by the trial Court as well as by the revisional court in rejecting the application for Supurdnama and stressed upon the fact that attitude of the Petitioner itself shows non-cooperation towards investigating agency investigating in the crime therefore prays rejection of the present Petition.

5. Learned Counsel for the Petitioner relies upon the judgment of the Supreme Court reported in **(2002) 10 SCC 283**, *Sunderbhai Ambalal Desai vs State Of Gujarat* wherein in paragraph seven the Supreme Court has held 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.”

6. Learned Counsel for the Petitioner submits that so far as the vehicle is concerned the vehicle would get destroyed lying with the Police authorities without use and that the vehicle as such would not be

necessary for further investigation to the Police authorities and therefore it should be released to its owner so that it can be used and he further relies upon the observations of the Supreme Court made in the preceding paragraph.

7. Considering the total facts and circumstances of the case particularly the factual matrix of the case, the observation given by the two Courts below while rejecting the application, where the conduct of the Petitioner itself reflects an adamant nature in not cooperating with the Police authorities in disclosing actual place from where coal was loaded and actual place where it was being transported. Further, during the course of search the documents which were in possession of the driver of the vehicle were also found to be fake document also shows that there was some illegal act which were being committed by the driver of the vehicle in connivance with the present Petitioner.

8. In the facts and circumstances of the case and also the judgment cited by the Petitioner would not come to his rescue as the said judgment was passed in an entirely different factual matrix which are not similar to the instant case. The CRMP accordingly being devoid of merits, the impugned order does not warrant any interference.

9. Accordingly, the Petition is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE