

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 1098 of 2015

Mohammad Irshad S/o Mohammad Ajmeri Aged About 39 Years R/o Village Pritamur Derapur, P.S. & Tehsil Sakandra, Civil And Rev. Distt. Kanpur (U.P.).

---- Petitioner

Versus

State Of Chhattisgarh Through Collector, Rev. And Civil District Bilaspur Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. Surfaraj Khan, Advocate.
For Respondent-State	:	Mr. Gary Mukhopadhyay, Dy. Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26.08.2016

1. Heard on I.A. No. 2/2016 , application for recalling of the order dated 08.08.2016 to the extent of a cost having imposed upon the Respondent of Rs. 5000/- to the Petitioner.
2. Learned State Counsel submits that it is the case where the authorities concerned had in fact supplied the necessary information to the office of the Advocate General, but because of an inadvertence on part of the office of the Advocate General proper information could not be brought to the notice of the Court at the relevant point of time which compelled the Court to pass an order imposing cost on 08.08.2016.
3. Learned State Counsel further submits that it was not a deliberate act on part of the authorities concerned but it was sheer inadvertence and oversight on part of the office of the Advocate General, therefore, prayed for recalling of the said order.

4. Learned Counsel for the Applicant does not oppose the application.
Though, he submits that there is lapse on part of the State in providing prompt information to the authorities concerned.
5. On due consideration of the facts, I.A. No. 2 stands allowed to the extent of the payment of the cost imposed by this Court in its order stands recalled.
6. Also, heard on I.A No. 1/2016, an application for taking documents on record filed by the Respondents. Since the learned Counsel for the Applicant does not oppose the application, accordingly, I.A. No. 1 stands allowed and the documents be taken on record.
7. Also, heard on merits with the consent of the parties.
8. The present Revision Petition under Section 397/401 of CrPC has been filed against order dated 07.10.2015 passed by the Fourth Additional Sessions Judge, Bilaspur in Criminal Appeal No. 149/2015 whereby an appeal filed under Section 454 of the CrPC seeking for release of seized vehicle(Truck), bearing Registration No. U.P.-77 N/9155 on Supurdnama was rejected.
9. Brief facts of the case are that the above seized vehicle was found to be involved in carrying eighteen cattle (buffalos) for slaughtering purpose. The said vehicle was seized along with the cattle by the Police Station, Ratanpur, on 05.12.2013 and the accused namely Riyaz Ahmed was arrested. Since then the vehicle is in the custody of the said Police Station in connection with Crime No. 294/13 registered under Sections 4, 6 and 10 of the Chhattisgarh Agriculture Cattle Preservation Act, 2004 (in short 'the Act, 2004'). A charge sheet was filed before the Judicial Magistrate First Class, Kota District – Bilaspur which was registered as Criminal Case No. J43/14 and on 19.09.2014 order of conviction and sentence was

passed under Sections 6 & 10 of the Act, 2004 by convicting the accused to R.I. for 2 years and fine of Rs. 2000/- and also ordered to confiscate the seized vehicle. An appeal was preferred by the accused person against the order of conviction before the Appellate Court which got decided resulting into reduction of sentence to the extent of jail sentence already undergone by them. Thereafter, the present Petitioner moved a Petition Cr.M.P. No. 555/2015 before this Court under Section 482 of CrPC for release of vehicle on Supurdnama, which was dismissed as withdrawn on 30.07.2015.

10. Soon thereafter, on the ground that since the trial as well as appeal have been concluded and the Petitioner was not an accused in the case, for the release of the vehicle on Supurdnama, the Petitioner moved an appeal under Section 454 of CrPC before the Fourth Additional Sessions Judge, Bilaspur which was registered as Criminal Appeal No. 149/2015. The Fourth Additional Sessions Judge, Bilaspur on 07.10.2015 affirming the order dated 19.09.2014 rejected the appeal for release of the vehicle on Supurdnama on the ground that since an order of conviction has been affirmed by the Appellate Court and the Trial Court as well as Appellate Court have not made any observation so far as the seized vehicle is concerned in the said judgments therefore it would not be proper to release the said vehicle on Supurdnama, leading to filing of the present Revision Petition.

11. Learned Counsel for the Petitioner submits that the Petitioner is a registered owner of the seized vehicle and he was not an accused in the said Criminal Case. He further submits since the vehicle is lying idle for more than 2 ½ years no fruitful purpose would be served if the vehicle remains idle in the custody of the

police personnels exposed to the extreme weather conditions. The vehicle would get decayed day by day and would further deteriorate by passage of time to the extent that it would become unusable after some time and therefore in the interest of justice the vehicle may be released to the Petitioner. He further undertakes to give any sort of conditions required for any proceedings initiated by the authorities.

12. However, Counsel for the State opposes the claim of the Petitioner submitting that the nature of offence said to have been committed in which the seized vehicle is involved is quite serious in nature and that the impugned order rejecting the Petitioner's application for release of the seized vehicle on Supurdnama does not warrant any interference by this Court as the reasons assigned for rejecting the application are just and proper.

13. On a specific query being put to the State Counsel he clearly makes a submission that it is a case where the confiscation proceeding till date has not been initiated by the authorities concerned for confiscating the seized vehicle. He further makes submission that he is not aware of the fact as to whether the authorities concerned will at all initiate confiscation proceeding or not.

14. The Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat**, reported in **2002 (10) SCC 283**, in paragraphs 7 and 17 has categorically enumerated the guidelines for releasing of the vehicle seized by the 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.”

15. 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.

16. In the instant case, in the opinion of this Court ends of the justice would meet if the said vehicle is now ordered to be released on Supurdnama subject to fulfillment of certain conditions.

17. For the foregoing reasons, impugned order dated 07.10.2015 is quashed. It is directed that the seized vehicle belonging to the Petitioner, i.e., Truck bearing Registration No. UP-77 N/9155, 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 even at the appellate stage. He shall further undertake to produce the vehicle to any competent authority under any other 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.

18. It is however made clear that said release of the vehicle is subjected to any confiscation proceedings initiated by the State at any moment of time.

19. In view of the same the Petitioner shall also furnish an affidavit at the time of furnishing security for getting the vehicle on Supurdnama by which he shall undertake to abide by any of the order passed in the confiscation proceedings if at all initiated at any point of time.

20. With the aforesaid observations, the present Revision Petition stands allowed.

**Sd/-
(P. Sam Koshy)
Judge**