

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22949 of 2016

Arising Out of PS.Case No. -43 Year- 2014 Thana -GOVERNMENT OFFICIAL COMP. District-
SAMASTIPUR

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Anil Kumar Yadav son of Late Jagdish Yadav, resident of village- Birudhia, Lal
Baba Asharam, Post Office- Birudhia, Police Station- Kaksa Panagarh, District-
Burdwan.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate
	:	Mr. Alok Chandra, Advocate
	:	Mr. Aparna Arun, Advocate
For the State	:	Mr. Narsingh Tanti, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-08-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed for quashing the order dated 16.07.2015 passed by the learned Judicial Magistrate, 1st Class, Samastipur in Excise Case No.43 of 2014 by which he has rejected the prayer of the petitioner for release of the tanker bearing Registration No. WB-37B-8086 which was seized by the Excise Department in connection with Excise Case No.43 of 2014.

2. On the basis of the complaint petition filed by the Sub Inspector of Excise, Excise Case No.43 of 2014 was registered on 15.10.2014 in the Court of Judicial Magistrate, 1st Class, Samastipur. The allegation in the complaint is that a tanker loaded with 19800 litres spirit bearing registration no.WB 37B 8086 while standing by



the side of the road at a lonely place near Kothia Bazar falling within the jurisdiction of Bangra outpost was raided and searched. Three goods carrier vehicles containing plastic drum of 200 liter were also found parked near the tanker. However, on seeing the raiding team, the drivers managed to escape with those three vehicles. On physical verification, seal of the tanker was found broken. On enquiry, the driver disclosed that he was getting the spirit unloaded on the instruction of one Jameel Bhai.

3. It is stated by the complainant that the tanker was seized in accordance with law and a copy of the seizure list was handed over to the driver Shankar Das.

4. It has been submitted by the learned counsel for the petitioner that the petitioner is the owner of the said tanker. He filed an application before the Judicial Magistrate, 1st Class, Samastipur for release of the vehicle, which was rejected, vide order dated 06.05.2015. Thereafter, a revision application was filed before the learned Session Judge, Samastipur, vide Cr.Revision No.305 of 2015 and the learned Session Judge, vide order dated 27.06.2015, allowed the revision application and remanded the matter back to the Court of Judicial Magistrate for passing order in the light of the observation made by the Hon'ble Supreme Court in the matter of **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in (2002) 10 SCC 283.



Thereafter, the petitioner pleaded before the court of Magistrate to release the tanker in the light of the observations made by the revisional court, but the learned Magistrate without paying any heed to the direction given by the revisional court rejected the application for release of the vehicle, vide order dated 16.07.2015, on the ground that the validity of registration of the vehicle had expired on 26.12.2013.

5. Learned counsel for the petitioner has submitted that the learned Judicial Magistrate erred both in law as well as on facts. He has submitted that the registration of the vehicle was valid till 26.12.2014, but the learned Magistrate has erroneously recorded in his order that the same was valid till 26.12.2013. In support of his submission, the petitioner has annexed a copy of the registration certificate, which is marked as Annexure-8 to the present application. He has submitted that since the said vehicle was seized and remained in the custody of the police, the registration after 26.12.2014 could not be effected because at the time of registration, it is mandatory to produce the vehicle before the registering authority. He has submitted that the vehicle in question was on way to Arunachal Pradesh from Haryana, as the Excise Department of Arunachal Pradesh had issued pass on 09.09.2014 in favour of M/s Dokrom beverages, Hollongi, District-Papumpare, Arunachal Pradesh for import of 20,000 BL of



Extra-Neutral Alcohol from M/S ADS Spirits Private Limited, Beri Kalanour Road, village-Bhutiyan, Tehsil- Beri, District- Jhajjar, Haryana. The pass was valid upto 23.10.2014. On the strength of the said pass, Excise Pass in Form 20A dated 10.10.2014, was issued by the Excise Inspector, M/S ADS Spirits Private Limited, Haryana for removal of 20,000 BL of Extra-Neutral Alcohol in favour of M/S Dekron Beverages Hollongi, Arunachal Pradesh. As such, the consignment was loaded in the tanker in question through S.S.Bulk Carrier, Kolkata for which invoice was also issued on 10.10.2014. After the consignment was loaded, the tanker crossed the U.P. Border and transit declaration form was issued by the Department of Commercial Taxes, U.P. on 10.10.2014. Similarly, upon entering into the Bihar border, transit permit was issued by the Department of Commercial Taxes, Bihar on 12.10.2014. He has submitted that the entire consignment was being transported on the strength of valid documents, but since the driver of the tanker indulged in illicit sale of about 200 litres of Extra Neutral Alcohol on 15.10.2014, the instant excise case was registered against him. He has submitted that on being satisfied with the valid documents, the petitioner has not been made accused.

6. On the other hand, learned counsel for the State has submitted that it is a case of recovery of huge quantity of illicit liquor



from the tanker in question. As such, considering the gravity of the offence and the fact that the validity of registration of the tanker had expired, the learned Magistrate has rightly rejected the prayer of the petitioner for release of the tanker. He has submitted that there is a provision for confiscation of vehicle under the Excise Act and in view of the allegations made, the vehicle may be confiscated by the authority concerned.

7. In reply, learned counsel for the petitioner has submitted that till date no confiscation case has been initiated in respect of the tanker in question.

8. Having heard learned counsel for the petitioner and learned counsel for the State and having perused the record, I find substance in the submissions of the learned counsel for the petitioner.

9. It is not in dispute that no confiscation proceeding has been initiated in respect of the tanker in question. Hence, the court of Magistrate is clothed with the requisite authority to deal with the matter of release of property pending trial of a criminal case. The argument advanced by the learned counsel for the State that a vehicle used in connection with an offence under the Excise Act may be confiscated under the provisions of the Act and hence the learned Magistrate rightly dismissed the application of the petitioner is misconceived. In absence of any proceeding initiated for confiscation



of the tanker, the court of Magistrate would be fully justified in passing order of release.

10. Chapter XXXIV of the CrPC deals with disposal of property. Section 451 of the CrPC under Chapter XXXIV deals with the order for custody and disposal of property pending trial in certain cases which reads as under:-

“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.”



11. The Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gurarat** (Supra) succinctly explained the object and whereof the various provisions of the CrPC as to disposal of case properly. It observed in the case as follows:-

“The object and scheme of various provisions of the code appear to be that where the property which has been the subject matter of an offence is seized by the police, it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary.”

12. Thus, from the ratio laid down by the Supreme Court, it is clear that unless it is absolutely necessary, the court cannot retain the seized property either in custody of the court or in custody of the police. Hence, it is the duty of the court to pass appropriate orders in respect of the seized property without delay.

13. The Supreme Court taking into account the horrifying situation of the case, property such as vehicles machines etc. found lying in police station premises and court premises and ultimately becoming junk and loosing their value held in **Sunderbhai Ambalal Desai** (supra) that the powers under Section 451 of the CrPC should be exercised expeditiously and judiciously. It observed in paragraph 7 as under:-

7. In our view, the powers under Section



451, Cr. P.C. 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 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.”

14. While dealing with the seized vehicles from time to time by the police in commission of various offences in **Sunderbhai Ambalal Desai** (Supra), the Supreme Court observed in paragraph 17 as under:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police station for a long time. 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. In sum and substance, it can safely be said that the Supreme Court has laid down that in case of seized vehicles during investigation or trial, they should not be allowed to deteriorate by being kept unused and unattended in the premises of the police station.

16. So far as the reason assigned by the learned Judicial Magistrate for rejection of the application of the petitioner seeking release of the tanker is concerned, the same is unsustainable. It is an admitted position that the certificate of registration of the tanker is in the name of the petitioner. Merely because the registration was till 26.12.2014, as would appear from the certificate of registration annexed to this application, the petitioner does not lose the status of its ownership. The tanker admittedly is lying in the police station since 15.10.2014. Hence, on or after 26.12.2014, when the period expired, the same could not have been produced before the authorities of the Transport Department. Once the vehicle is released and it passes fitness test, the registration may be renewed further. The denial of release of the tanker on the ground of expiry of registration period



is, thus, totally misconceived.

17. In view of the discussions made, hereinabove, this application is allowed. The order dated 16.07.2015 passed by the learned Judicial Magistrate, 1st Class, Samastipur in Excise Case No.43 of 2014 is quashed. The tanker bearing registration no.WB-37B 8086 seized in connection with the aforesaid Excise Case No.43 of 2014 is directed to be released to the interim custody of the petitioner on the following conditions:-

- (a) The petitioner shall execute a personal bond of Rs.2,00,000/- (two lakh only) to the satisfaction of the learned Magistrate;
- (b) He shall not alienate the vehicle or alter its nature; and
- (c) He shall produce the vehicle before the court concerned, as and when directed by the learned Magistrate.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	AFR
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