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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.358 of 2016

Sanju Nishad, S/o Bhagwanta Prasad Nishad, aged about 35 years, Occupation Business, R/o Jhajhpuri Kala, P.S. & Tahsil Lormi, District Mungeli (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Police Station Lormi, District Mungeli (C.G.)
2. Superintendent of Police, Mungeli, District Mungeli (C.G.)
3. Sub Divisional Officer, Lormi, District Mungeli (C.G.)

---- Respondents

For Petitioner: Mr. Anand Shukla, Advocates.

For State/Respondents: -

Mr. Aditya Sharma, Panel Lawyer.

Amicus Curiae: Mr. Saurabh Dangi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/05/2017

1. The jurisdictional police seized an amount of Rs.5,60,000/- from the car owned and possessed by the petitioner in exercise of the provisions contained in Section 102 of the CrPC on 25-11-2016 and also seized the car in question i.e. Nano bearing registration No.CG-10/FA-1422. The petitioner made an application under Section 457 of the CrPC for grant of custody of the car and to handover the amount in dispute. The said application was rejected by the Judicial Magistrate

First Class, Lormi holding that the amount in question and the car have been seized by the police under Section 102 (1) of the CrPC, but such an information has not been given to the Judicial Magistrate under Section 102 (3) of the CrPC, therefore, the provisions of Section 457 of the CrPC are not attracted. Learned Magistrate relied upon the decision of the Madras High Court in the matter of **The Supdt. of Customs & Central Excise, Nagercoil v. R. Sundar**¹. Questioning that order, this petition under Article 226 of the Constitution of India has been preferred.

2. Mr. Anand Shukla, learned counsel appearing for the petitioner, would submit that the order impugned is unsustainable in law.
3. Mr. Aditya Sharma, learned Panel Lawyer appearing on behalf of the State/respondent, would support the impugned order.
4. Mr. Saurabh Dangi, learned amicus curiae, would submit that seizure of property by the concerned police has necessarily to be reported to the jurisdictional Magistrate under Section 102 (3) of the CrPC and the police officer making seizure is obliged to submit information and non-furnishing of information would not bar the jurisdiction of the Magistrate under Section 457 of the CrPC which he has otherwise has to grant custody of the seized articles even on the information submitted by any other

1 1993 Cri.L.J. 956

person interested in that property on that behalf. He would further submit that the learned Magistrate has picked-up some sentences from the decision rendered by the Madras High Court in **R. Sundar's** case (supra) and has rejected the application which is absolutely unsustainable under the law.

5. I have heard learned counsel for the parties and also gone through the record with utmost circumspection and given thoughtful consideration to the same.
6. It is not in dispute that the petitioner's car and amount in question were seized by the jurisdictional police. A plain reading of sub-section (1) of Section 102 of the CrPC indicates that any police officer has power to seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Section 102(3) of the CrPC obliges every police officer acting under sub-section (1) to inform forthwith the seizure to the Magistrate having jurisdiction.
7. Section 457 of the CrPC empowers the Magistrate to give delivery of said property to the person entitled to possession subject to certain conditions.
8. The question for consideration would be whether non-submission of information by the police officer making seizure

under Section 102 (1) of the CrPC to the jurisdictional Magistrate under Section 102 (3) of the CrPC, which the police officer is otherwise obliged, can take away the jurisdiction of the Magistrate to grant custody / interim custody under Section 457 (2) of the CrPC.

9. Section 102 (3) of the CrPC mandates every police officer to forthwith report the seizure to the Magistrate having jurisdiction. Therefore, such a provision is obligatory and imperative. Non-reporting the seizure to the Magistrate having jurisdiction cannot take away the authority of the concerned Magistrate to deal with the property in terms of Section 457(2) of the CrPC, as the provision of the Code casts an obligation to report to the Magistrate by the police, but if the concerned police inadvertently or willfully defaults to report, such default would not oust the initial jurisdiction of the Magistrate in respect of such seized property.

10. The Orissa High Court in the matter of **M.S. Jaggi v. Subaschandra Mohapatra**² has clearly held that the seizure of the property whether reported by the police or any other person, the Magistrate will have the jurisdiction under Section 457 of the CrPC, and observed as under in para 7: -

“7. From the aforesaid discussion, the following conclusions arise :--

2 1977 Cri.L.J. 1902

(1) Whenever the seizure of the property by the police is reported to a Magistrate, his jurisdiction to act further under Section 457 accrues. Such report may be made either by a police officer or by any other person interested.

.....

.....”

11. It appears that the learned Judicial Magistrate while deciding the matter has relied upon the decision of the Madras High Court in **R. Sundar's** case (supra) and declined to grant interim custody by picking up few sentences of the decision of the Madras High Court in **R. Sundar's** case (supra) to hold that such Magistrate has no jurisdiction. It further appears that the learned Judicial Magistrate has merely relied upon the few lines the judgment of the Madras High Court in **R. Sundar's** case (supra) and did not take into consideration the whole judgment much less the context and wrongly rejected the application under Section 457 of the CrPC.
12. The Supreme Court in the matter of **CIT v. Sun Engineering Works (P) Ltd.**³ has clearly held that “it is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorce from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be

3 (1992) 4 SCC 363

considered in the light of the questions which were before this Court” and observed as under in paragraph 39: -

“39. ... It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. [In Madhav Rao Scindia v. Union of India](#) [(1971) 1 SCC 85 : (1971) 3 SCR 9] this Court cautioned:

“It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.””

13. In view of above discussion, the learned Magistrate is absolutely unjustified in rejecting the application under Section 457 (2) of the CrPC wholly on untenable ground.

14. As a fallout and consequence of aforesaid discussion, the impugned order dated 25-11-2016 passed by the Judicial Magistrate First Class, Lormi rejecting the application under Section 457 of the CrPC is hereby set aside and the application is restored to the original file of the said Magistrate

for hearing and disposal afresh in accordance with law after hearing both the parties and taking into consideration that the seizure of car has already been brought to the notice of the Magistrate. The application shall be decided within 30 days from the date of receipt of a cop of this Court.

15. Before parting with this case, this Court appreciates the assistance rendered by Mr. Saurabh Dangi, Advocate, who on short notice argued the matter by placing relevant judgments as well as by submitting written submission.

16. The writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge