

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 614 of 2015**

- Smt. Hirmaniya Bai Wd/o Late Shivbhajan, Aged about 73 Years, Caste- Uraon (Scheduled Tribe), Occupation- Nothing, R/o Village- Sewari Khas (Khatangpara) P.S. and Tahsil- Rajpur, Balrampur, Civil and Revenue District Balrampur (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh Through: The District Magistrate, Surguja, Ambikapur (Chhattisgarh)
2. Sabeena Xalxo, D/o Shri Seemon Xalxo, Aged about 35 years, Occupation Service (Anganbadi Worker), Permanent R/o Village and Post Bhulsikala, P.S. and Tahsil – Kusmi (Samri), District Balrampur (Chhattisgarh), Permanent resident – Government Raghunath District Hospital Premises, Bilaspur Raod, Ambikapur, District Surguja (C.G.)

---- Respondents

For Petitioner	:-	Shri A.N. Bhakta, Advocate.
For Respondent No.1/State	:-	Shri Anupam Dubey, Dy. G.A.
For Respondent No.2	:-	Shri Manoj Paranjpe & Shri Vikram Dixit, Advocates

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****17-03-2017**

1. Heard the petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.)
2. This petition has been brought challenging the impugned order dated 26-05-2015 passed by Sixth Additional Sessions Judge, Ambikapur, Surguja (C.G.) in Criminal Revision No.10/2015 by which the order passed by Chief Judicial Magistrate, Ambikapur in Crime No.43/2015 of Police Station Ambikapur dated 22-01-2015 was upheld.
3. Facts of the case are that late Dr. H.N. Ram was the registered owner of the vehicle Tata Sumo bearing registration No. CG 15 – 8112. Dr. H.N. Ram expired on 21-12-2014. Respondent No.2 claims to be the second wife of late

Dr. H.N. Ram stating that her marriage took place after Dr. H.N. Ram divorced his first wife Smt. Pratima Kujur. A dispute arose regarding claim on the vehicle owned by late Dr. H.N. Ram, because of which respondent No.2 lodged a complaint in the Police Out Post Manipur under the jurisdiction of Police Station Ambikapur. On the basis of this complaint, the property in dispute, the vehicle was seized by the police under the provision of Section 102 of the Cr.P.C.

4. An application was moved by respondent No.2 before the Court of Chief Judicial Magistrate, Ambikapur. This application was decided vide order dated 22-01-2015 by allowing the application by ordering the interim release of the vehicle in favour of respondent No.2 on the conditions mentioned in the order. This order was challenged in revision before the Sessions Court which has been decided by the impugned order while upholding the order of Chief Judicial Magistrate.

5. The grounds in this Petition are that the order was passed in favour of respondent No. 2 without affording any opportunity of hearing to the petitioner and the legally married wife of Dr. H.N. Ram. It is stated that respondent No. 2 is not legally married wife of Dr. H.N. Ram, hence, she is not entitled to receive the vehicle on 'supurdnama'. Respondent No. 2 has committed fraud by getting the order from the Court below. It is prayed that the order of interim relief passed by the Court below be set aside and the vehicle be given to the petitioner on 'supurdnama'.

6. It is submitted by learned counsel for the petitioner that her application for releasing the seized vehicle on 'supurdnama' in her favour was pending before the Court of Chief Judicial Magistrate, Ambikapur on the date the impugned order was passed, which was not taken in to consideration by the

Court below. This fact was also ignored by the revisional Court below. It is submitted that the case may be remanded back for consideration before the Court of first instance i.e. Court of Chief Judicial Magistrate regarding the decision on entitlement for possession of the seized vehicle after giving opportunity to all the rival claimants.

7. Learned State counsel has no objection if the case is remanded back for reconsideration.

8. Learned counsel for respondent No. 2 has objected that an order is standing in favour of respondent No. 2 and on the basis of this order respondent No. 2 is enjoying possession of the seized vehicle, as per conditions laid by the Court below, which may not be disturbed if the case is remanded till the final orders are passed by Court below.

9. Considering the grounds raised in the petition and the submissions made by both the parties, it seems to be apparent that the order dated 22-01-2015 was passed by the Court of Chief Judicial Magistrate without considering the rival claims of the legal representatives of Dr. H.N. Ram. The statement in petition and submissions disclose the rival claims of claimants, hence, the question of entitlement is surely disputed in the case which needs to be decided after giving full opportunity to all the parties who have come forward to make a claim on the property seized by the Police Station, Ambikapur.

10. Considering statement in the petition and the submissions of the parties, the prayer made by learned counsel for the petitioner is allowed. The orders of Court below deciding the entitlement of respondent No. 2 for possession over the seized property is hereby set aside. The matter is remanded back to the Court of Chief Judicial Magistrate, Ambikapur to decide the application under Section 457 of the Cr.P.C. afresh after giving opportunity to the petitioner and

any other person interested in making a claim for entitlement over the seized property. The petitioner and respondent No. 2 are directed to appear before the Court below on **10-04-2017** for further proceedings in the matter after remand of this case.

11. The vehicle in question is presently in the possession of respondent No. 2., it is directed that the vehicle shall remain in her custody on condition that no third partly interest is created on the concerned vehicle and the vehicle shall be kept in maintained condition which may be produced before the Court if so ordered by the Court below. This order shall remain effective until the question of entitlement is decided and order of interim relief is passed by the Court below.

Sd/-
(Rajendra Chandra Singh Samant)
Judge