

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1485 of 2017

Mithilesh Kumar, S/o. Late Nanak Singh, Aged About 50 Years, Occupation Transporter, At Present R/o. Sarona, Bhainsthan, Raipur Chhattisgarh, Permanent R/o. 60, Village Lodhipur, P.S. Jahanabad District Jahanabad, Bihar.

---- Petitioner

Versus

State Of Chhattisgarh, Through Officer in Charge of the Police Chowki Rairumakhurd, Police Station Dharamjaigarh, District Raigarh, Chhattisgarh

---- Respondent

For Petitioner : Mr. Abhishek Saraf, Advocate
For Respondent : Mr. Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

24.11.2017

Heard

1. The instant petition is against the order dated 11.10.2017 passed by the Fifth Additional Sessions Judge Raigarh in Criminal Revision No.94/2017 wherein the application for custody of the vehicle which was refused to the petitioner vide order dated 17.08.2017 in Criminal Case No.49/2017 by the J.M.F.C. Dharamjaigarh was dismissed.
2. As per the prosecution case, the vehicle bearing No.C.G.04 JA 2724 while was transporting 11 cattle was apprehended under a Crime No.44/2017 and the offence under Section 4 & 6 of the Chhattisgarh Agricultural Cattle Preservation Act, 2004 and Section 66/192 of the Motor Vehicles Act was clamped.
3. Learned counsel for the petitioner would submit that the petitioner is the owner of the vehicle, which was alleged to be involved in commission of crime under the Chhattisgarh Agricultural Cattle

Preservation Act, 2004 (*for short "the Act, 2004"*). He submits that after seizure of the vehicle on 15.02.2017 the bar of sub-section 3 of Section 6 of the Act, 2004 would not apply and no purpose would be served while keeping the vehicle in custody; consequently, the same may be released.

4. Reply of the State has not been filed.
5. Perused the documents. It appears that earlier the CRMP No.477/2017 was filed which was dismissed as withdrawn on 13.04.2017. The order of this Court in CRMP No.477/2017 dated 13.04.2017 would show that the petitioner was allowed to withdraw the application for supurdnama and was given liberty to file the application after expiry of the period contemplated under Section 6(3) of the Act, 2004. The order would show that the application for supurdnama was filed in the month of August, 2017 which was dismissed. Subsequently, it was further affirmed by the order dated 11.10.2017.
6. Since the case was under the Act, 2004, sub-section 3 of Section 6 would be relevant, which is reproduced herein below :

"6 (3). The vehicle or conveyance so seized under sub-section (2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, whichever is earlier and such vehicle shall also be liable for confiscation at the end of the trial."

7. In this case, as it suggest that the vehicle was seized in the month of February, 2017 and six months have passed, therefore, while deciding this issue the bar of sub-section 3 of Section 6 of the Act, 2004 would not applicable, as six months have already been expired and admittedly as appears the final judgment has not

been passed. It is also not been disputed by the State that the final judgment has not been passed.

8. Considering the facts of this case, the bar of sub-section 3 of Section 6 of the Act, 2004 would not apply and the vehicle as appears is lying at the disposal of the authorities or at police station. Therefore, if it is kept in the police station it must be occupying space or is prone to cause natural decay and may lose its road worthiness when kept in stationary position. In context of subject matter the principle laid down in case of ***General Insurance Council and others Vs. State of Andhra Pradesh and others*** reported in ***(2010) 6 SCC 768*** which has earlier reiterated principle laid down in case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***(2002) 10 SCC 283***, wherein it is held that keeping the vehicle in stationary position at the police station would not serve any purpose except the decay of its value interim custody of the vehicle can be handed over. Reply of the State is silent as to whether any confiscation proceeding has been commenced or not. In the facts of this case, keeping the vehicle for period indefinite in police station will destroy very nature of the vehicle as it may turn junk in future. Therefore, I am inclined to allow the application for interim custody of the vehicle.
9. In the result, order dated 11.10.2017 is quashed and the petition is allowed. The vehicle is directed to be released to the petitioner on the following conditions:-

1. Before release of vehicle proper panchnama be prepared.

2. Photographs of vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial.

3. Proper security i.e. personal bond of Rs. 20 Lakhs and like sum of local surety be obtained before release of vehicle.

Sd/-
(Goutam Bhaduri)
Judge

Ashok