

N THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45123 of 2017

Arising Out of PS.Case No. -225 Year- 2015 Thana -NOKHA District- SASARAM (ROHTAS)

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Suresh Narayan Pandey son of Sri Vidya Sagar Pandey, resident of village- Nandpur (Gaighat), P.S. Brahmipur, District Buxar, presently at village Raghunathpur, P.S. Nokha, District - Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sohrai Rai son of Late Sunder Rai, resident of village- Harnichak, P.S.- Beur, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-06-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing of the order dated 06.07.2017 passed by the learned Sessions Judge, Rohtas at Sasaram in Cr. Revision No.177 of 2017 by which he has rejected the revision application filed by the petitioner against the order dated 26.05.2017 passed by the learned Additional Chief Judicial Magistrate, Rohtas at Sasaram in Nokha P.S. Case No.225 of 2015 by which the learned Additional Chief Judicial Magistrate had rejected the petition filed by the petitioner for release of the truck bearing registration no.24G/1129 seized in connection with Nokha P.S. Case No.225 of 2015.



2. The undisputed facts of the case are as under:-

(a) The petitioner has been made accused in Nokha P.S. Case No.225 of 2015 registered under Section 395 of the Indian Penal Code. His truck bearing registration no.24G/1129 has been seized by the investigating officer of the case on 07.11.2015.

(b) After being released on bail in connection with the afore-stated case, he filed a petition for release of the seized vehicle in the Court of Sub Judge-IX-cum-Additional Chief Judicial Magistrate, Rohtas at Sasaram on 25.04.2017.

(c) The Additional Chief Judicial Magistrate, Rohtas at Sasaram rejected his prayer vide order dated 26.05.2017 on the ground that the seized vehicle is a material exhibit in the police case as also the fact that the release of the vehicle may facilitate repetition of offence and would hamper investigation of the case.

(d) The petitioner filed a revision application against the order dated 26.05.2017 passed by the learned Additional Chief Judicial Magistrate, Rohtas at Sasaram vide Cr. Revision No.177 of 2017, which was also dismissed by the revisional court vide order dated 06.07.2015 and the order passed by the learned Additional Chief Judicial Magistrate, Rohtas at Sasaram was affirmed.

3. Learned counsel for the petitioner submitted that the petitioner is a registered owner of the truck in question which is a



commercial vehicle and is only source of his livelihood. It has been kept in open air since its seizure in 2015. If it is not released, it would become junk and lose its utility. He submitted that the reasons assigned by the learned Additional Chief Judicial Magistrate, Rohtas at Sasaram as also the revisional court for rejecting the prayer of the petitioner for release of the vehicle are patently bad in law as also on facts. The courts below have failed to notice the provisions prescribed under Section 451 of the Cr.P.C. and have not even considered the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283]**.

4. Per contra, learned counsel for the State submitted that there is no illegality in the order impugned. The petitioner, being owner of the vehicle in question, is alleged to have utilized the vehicle for the purpose of committing dacoity. The allegations made against him were found true in course of investigation and, thus, he has been sent up for trial. He submitted that the vehicle in question is a material exhibit and would be required to be produced before the court at the time of trial. The revisional court has appreciated the facts and law in correct perspective and has passed a reasoned order, which does not warrant any interference by this Court.

5. I have heard learned counsel for the parties and carefully perused the record.



6. Under Cr.P.C., Section 451 in Chapter XXXIV deals with disposal of property deals with the order for custody and disposal of property pending trial. It 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 any 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.”

7. The Supreme Court in **Sunderbhai Ambalal Desai** (Supra) succinctly explained the object and scheme of the various provisions of the Cr.P.C. as to disposal of case and observed:-



“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.”

8. From the observation made by the Supreme Court, it is clear that unless it is absolutely necessary, the court cannot retain the seized property either in its own custody 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.

9. In the afore-stated case after 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, the Supreme Court held that the powers under Section 451 of the Cr.P.C. should be exercised expeditiously and judiciously. The court observed:-

“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 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.”

10. The Supreme Court while dealing with the seized vehicles specifically observed:

“In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations 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.”

11. In sum and substance, 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.

12. Keeping in mind the ratio laid down by the Supreme



Court in **Sunderbhai Ambalal Desai** (supra), if I look at the order impugned passed by the learned Session Judge, Rohtas at Sasaram, the same cannot be sustained. The reasons assigned by the learned Additional Chief Judicial Magistrate for rejection of the petition of the petitioner seeking release of the truck in question were unsustainable. Merely because the seized vehicle is a material exhibit, the Additional Chief Judicial Magistrate was not justified in rejecting the prayer of the petitioner. The court ought to have appreciated the provisions prescribed under Section 451 of the Cr.P.C. and the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai** (Supra) before passing the order. While affirming the order passed by the learned Additional Chief Judicial Magistrate, the learned Session Judge has also failed to appreciate the facts and law in correct perspective.

13. Admittedly, the truck is lying in the custody of the police since 07.11.2015. The condition of the vehicle must have deteriorated a lot by now. The same cannot be allowed to be a junk merely because a criminal case is pending against the petitioner. The denial of release of the truck on the ground that the same is material exhibit is totally misconceived.

14. In view of the discussions made above, this application is allowed. The impugned order dated 06.07.2017 passed by the learned Session Judge, Rohtas at Sasaram in Cr. Revision No.177 of



2017 is set aside. Consequently, the order dated 26.05.2017 passed by the learned Additional Chief Judicial Magistrate, Rohtas at Sasaram in Nokha P.S. Case No.225 of 2015 is also quashed. The truck bearing registration no.24G/1129 seized in Nokha P.S.Case No.225 of 2015 is directed to be released to the petitioner on the following conditions:-

(a) The petitioner shall file documents to the satisfaction of the learned Additional Chief Judicial Magistrate, Rohtas at Sasaram that he is the registered owner of the truck in question;

(b) He shall execute a bond of rupees one lac to the satisfaction of the learned Magistrate;

(c) He shall not alienate the truck in question or alter its nature;

(d) He shall produce the truck before the court concerned as and when directed by the court.

(Ashwani Kumar Singh, J)

Md.S./-

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