

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50685 of 2017

Arising Out of PS.Case No. -157 Year- 2016 Thana -MAHUA District- VAISHALI(HAJIPUR)

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Alka Singh Wife of Sanjay Kumar @ Sanjay Singh Resident of F/No. 3C Narayan
Villa, Patel Nagar, P.S. Shastri Nagar District-Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gopal Shankar, Adv.
: Mr. Anirudh Kumar Sinha, Adv.
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 12-07-2018

This application under Section 482 of the Code of Criminal Procedure filed by the petitioner for setting aside the order dated 06.05.2017 passed by the learned Sessions Judge, Vaishali in Cr. Rev. No. 294 of 2016 whereby and whereunder he has dismissed the revision application preferred by the petitioner against the order dated 14.10.2016 passed in Mahua P.S. Case no. 157 of 2016 by the learned Chief Judicial Magistrate, Vaishali at Hajipur whereby he has rejected the application filed by the petitioner for release of vehicle bearing registration no. BR-01-PD 1854.

2. The only ground on which the revision application has been dismissed by the learned Sessions Judge is that the vehicle in question was used in commission of crime for which Mahua P.S. Case Nos. 157 of 2016, 158 of 2016 & 159 of 2016 have been



registered.

3. It is submitted by the learned counsel for the petitioner that the petitioner is not an accused in any of the said cases and merely because the police suspected the vehicle to have been used by the criminals in commission of such crime the prayer for the release of the vehicle should not have been refused. It is submitted that the Supreme Court in *Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283]* has laid down specific guidelines for dealing with cases for release of seized property. It is submitted that the learned Magistrate as well as learned Sessions Judge, have failed to appreciate the provisions prescribed under Section 451 of the Code of Criminal Procedure (for short 'Cr.P.C') and the ratio laid down by the Supreme Court *Sunderbhai Ambalal Desai* (Supra).

4. On the other hand learned counsel appearing for the State submitted that no error can be found in the order passed by the learned court below. He submitted that the vehicle in question is a material exhibit and even though the petitioner is not an accused in the criminal cases, it would not be proper to release the vehicle till the conclusion of the trial as the release of the same would cause prejudice to the case of the prosecution.

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

6. Chapter XXXIV of the Cr.P.C deals with disposal of



property. Section 451 of the Cr.P.C 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.”*

7. 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 engaged the attention of the Supreme Court in ***Sunderbhai Ambalal Desai*** (Supra).



8. In the said case, while holding that the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously, the Supreme Court observed :

“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.”*

9. The Supreme Court further 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.”

10. It further observed : *“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.”

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 and become junk by keeping unused and unattended in the premises of the police station or of the court.

12. Coming back to the facts of the present case, the vehicle in question is lying in the police station since 07.05.2016. It is being kept in open space and is losing its value and, in case, it is not released it would turn into junk.

13. In the opinion of this Court, the court below has completely failed to appreciate the facts and law involved in the case. It has paid no heed to the ratio laid down by the Supreme Court in ***Sunderbhai Ambalal Desai*** (Supra), which has been followed by the Supreme Court as well as this Court in several other cases, which is a serious matter. The law laid down by the Supreme Court is binding upon all courts and no court is expected to show any disregard to the orders passed by the Court.

14. In view of the discussions made above, I set aside the



impugned order dated 06.05.2017 passed by the learned Sessions Judge, Vaishali in Cr. Rev. No. 294 of 2016 as also the order dated 14.10.2016 passed by the learned Chief Judicial Magistrate, Vaishali at Hajipur in Mahua P.S. Case no. 157 of 2016. The Scorpio vehicle bearing registration no. BR-01-PD 1854 seized in connection with Mahua P.S. Case no. 157 of 2016 is directed to be released to the custody of the petitioner on the following conditions:-

- (a) The petitioner shall execute a personal bond of Rs.50,000/- (Fifty thousand) only to the satisfaction of the learned Chief Judicial Magistrate, Vaishali at Hajipur;
- (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 court.

15. Registry is directed to send a copy of the order to the learned Sessions Judge, Vaishali at Hajipur for perusal forthwith.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13-07-2018
Transmission Date	13-07-2018

