

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48020 of 2016

Arising Out of PS.Case No. -45 Year- 2011 Thana -SULTANGANJ District- BHAGALPUR

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Babli Devi, wife of Vijay Yadav, Resident of village- Vhalgori, P.S.- Jhajha,
District- Jamui.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. S. K. Lal, Advocate
Mr. Anuj Kumar, Advocate

For the Opposite Party/s : Mr. Chaubey Jawahar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-05-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioner for quashing the order dated 28.09.2015 passed by the learned Additional Sessions Judge, VI, Bhagalpur in Sessions Trial No. 260 of 2012 arising out of Sultanganj P. S. Case No. 45 of 2011.

2. Mr. S. K. Lal, learned counsel appearing for the petitioner submitted that the petitioner is the owner of the Bolero vehicle bearing registration no. JH-15D-9859, which was seized in connection with Sultanganj P. S. Case No. 45 of 2011 instituted for the offences punishable *inter alia* under Sections 121A, 122, 124A read with 34 of the Indian Penal Code, 25 (1B)(a), 25(1)(1A), 35



and 34 of the Arms Act and 10 and 13 of the Unlawful Activities (Prevention) Act. The petitioner being the registered owner having valid document of said Bolero vehicle moved before the learned trial judge for release of the same. However, the application filed by the petitioner has been rejected vide impugned order dated 28.09.2015. He submitted that the impugned order of rejection would show that the prayer of the petitioner has been rejected only in view of gravity of the charge as also in view of the fact that the informant and the investigating officer were not examined during trial. According to him, these facts could not have been the ground for denying release of the vehicle in question. He submitted that the order impugned has been passed in complete disregard to the law laid down by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283]**, **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 290]** and **General Insurance Council and Ors vs. State of Andhra Pradesh & Ors. [(2010) 6 SCC 768]**. He submitted that in the aforesaid judgments, the Supreme Court considered 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 losing their value.

3. *Per contra*, learned counsel appearing for the State submitted that the offences are quite serious in nature and the



release of the vehicle would not be in the interest of justice. He submitted that till date the trial has not been concluded and certain witnesses are yet to be examined. In that view of the matter, if the vehicle would be released a valuable piece of evidence would be lost. According to him, the order impugned in the present application does not suffer from any illegality.

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

5. I find force in the submissions made by the learned counsel for the petitioner.

6. The Supreme Court has taken into consideration the contention raised by the learned counsel for the State while deciding the cases on which reliance has been placed on behalf of the petitioner.

7. In **Sunderbhai Ambalal Desai vs. State of Gujarat** (Supra-1), after taking into consideration the provisions of Section 451 of the CrPC, the Supreme Court held as under:-

“ In our view, the powers under Section 451, Cr PC 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.”

8. In **Sunderbhai Ambalal Desai vs. State of Gujarat** (Supra-2), the Supreme Court clarified that signature of the complainant should be taken on the photographs of the material object and the same be kept on record to be exhibited at the time of trial. The Court further observed that seizure report is sufficient and there may not be any necessity to produce the vehicle before the Court. The relevant observation made by the Supreme Court in this regard in para 2 is reproduced hereunder:-

“2. ... Further, with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the Court and the seizure report may be sufficient.”

9. The provisions of Sections 451 and 457 of the CrPC were once again considered by the Supreme Court in **General**



Insurance Council and Ors vs. State of Andhra Pradesh

(Supra). In that case, the Supreme Court after noticing that police as well as prosecuting agency were not taking adequate steps for compliance of the directions in **Sunderbhai Ambalal Desai** case, which resulted in loss of assets gave further directions in this regard when it was hearing a petition for release of seized vehicle by an Insurance Company in para 13 as under:-

“13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in **Sunderbhai Ambalal Desai [(2002) 10 SCC 283]** considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with **regard to seized vehicles are required to be given:** "(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. **Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release. (B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may**



be dispensed with. (C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.”

(emphasis mine)

10. In view of the ratio laid down by the Supreme Court in the cases on which learned counsel for the petitioner has placed reliance, the order impugned cannot be sustained.

11. Accordingly, the impugned order dated 28.09.2015 passed by the learned Additional Sessions Judge, VI, Bhagalpur in Sessions Trial No. 260 of 2012 arising out of Sultanganj P. S. Case No. 45 of 2011 is set aside. The matter is remitted back to the trial court. The learned trial Judge shall be required to go through the decisions of the Supreme Court noted above and pass appropriate order in favour of the petitioner in case the petitioner is found to be the registered owner of the vehicle in question and no confiscation proceeding in respect of the vehicle is going on. He shall be required to dispose of the matter as early as possible, preferably



within one month from the date of receipt/production of a copy of this order.

12. With the aforesaid observation and direction, the application is disposed of.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2018
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