

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45036 of 2017

Arising Out of PS.Case No. -6 Year- 2016 Thana -HAJIPUR SADAR District- VAISHALI
(HAJIPUR)

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1. Janki Kumari, Wife of Ram Nandan Chaudhary, Resident of Nopuranga Bagh,
P.S.- Dighikala West, P.S.- Sadar, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha, Adv.
Mr. Ajay Kumar Singh, Adv.
Ms Kanchan Kumari, Adv.

For the Opposite Party/s : Mr. Kumar Virendra Narayan, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 15-05-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C.') has been filed by the
petitioner for quashing the order dated 14.02.2017 passed by the
learned Sessions Judge, Vaishali at Hajipur in Cr. Rev. No. 300 of
2016 by which the revision application preferred against the order
dated 10.11.2016 passed by the learned Chief Judicial Magistrate,
Vaishali at Hajipur in Hajipur Sadar P.S.Case No. 6 of 2016 has been
dismissed.

3. The petitioner being the owner of the Maruti Swift



Dezire Car bearing registration no. BR-31N-8066 filed an application under Section 451 of the Cr.P.C. in the court of Chief Judicial Magistrate, Vaishali at Hajipur for its release as the said vehicle was seized in connection with Hajipur Sadar P.S.Case No.6 of 2016 registered for the offences punishable under Sections 364, 302, 394, 201 of the Indian Penal Code and 27 of the Arms Act. It was pleaded by the petitioner before the learned Chief Judicial Magistrate that the petitioner is neither an accused named in the FIR nor has she been sent up for trial in the said case. However, the request for release of the vehicle was rejected by the learned Chief Judicial Magistrate vide order dated 10.11.2016 on the ground that the said vehicle was used in the commission of crime and, thus, the same is a material exhibit in the case. The revisional court also rejected the revision application vide impugned order dated 14.02.2017 on the same ground that the vehicle in question is a material exhibit and the same can be required during trial.

4. The contention of the petitioner is that the learned court below erred both in law as well as on facts. The court of Magistrate as well as the revisional court failed to appreciate that there is no dispute to the fact that the petitioner is the owner of the vehicle and she is not in any manner involved in the commission of crime. They also failed to appreciate the fact that in view of the statutory provisions



prescribed under Section 451 of the Cr.P.C. and in view of the judgment of the Supreme Court in the case of *Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283]*, the vehicle in question could not have been allowed to remain in the premises of the Police Station for an indefinite period.

5. On the other hand, learned counsel for the State submitted that the alleged offence is of serious nature. The petitioner may not be an accused involved in the commission of crime, but there is no dispute to the fact that the vehicle in question was utilized in the commission of the offence. He submitted that since the vehicle in question was involved in the commission of crime, the same may be required in course of trial as a material exhibit and, thus, the court below has rightly rejected her application preferred for release of the vehicle.

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

7. Chapter XXXIV of the Cr.P.C. deals with disposal of property. Section 451 of the Cr.P.C. under Chapter XXXIV 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.”

8. The Supreme Court in *Sunderbhai Ambalal Desai* (Supra) succinctly explained the object and whereof the various provisions of the Cr.P.C. as to disposal of property pending trial. The Court observed as under :-

“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.”

9. Thus, from the ratio laid down by the Supreme Court, it is clear that unless it is absolutely necessary, the court cannot retain the seized property either in custody of the court 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.



10. Further, 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 in *Sunderbhai Ambalal Desai* (supra) observed in para 7 as under:-

“7. 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.”

11. While dealing with the seized vehicles from time to time by the police in commission of various offences in *Sunderbhai Ambalal Desai* (Supra), the Supreme Court observed in paragraph 17 as under:

“17. 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.”

12. Thus, it would be manifest that 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.

13. Keeping in mind the ratio laid down by the Supreme Court in the decision noted above, the reason assigned by the learned Chief Judicial Magistrate and the revisional court for dismissal of the petition seeking release of the vehicle in question cannot be sustained. On perusal of the order passed by the learned Magistrate, it would be evident that the police report made it clear that the vehicle in question has been registered in the name of the petitioner. Hence, denial of release of the vehicle on the ground of its requirement during trial as material exhibit was totally misconceived. The revisional court also failed to appreciate the facts and law involved in the case.

14. Accordingly, the impugned order dated 14.02.2017 passed by the learned Sessions Judge, Vaishali in Cr. Rev. No. 300 of 2016 is set aside. Consequently, the order dated 10.11.2016 passed by the learned Chief Judicial Magistrate, Vaishali at Hajipur in Hajipur Sadar P.S.Case No. 6 of 2016 is also set aside. The court below is



directed to release the car bearing registration no. BR-31N-8066 to the interim custody of the petitioner on the following conditions :-

- (a) The petitioner shall execute a personal bond of Rs.1,00,000/- (one lakh) 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.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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