

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1246 of 2019

Arising Out of PS. Case No.-23 Year-2019 Thana- OBRA District- Aurangabad

BHOLA S/o Kaluva Resident of Village- Siras Khera, P.S.- Mundapanda,
District- Moradabad, Uttar Pradesh.

... .. Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, State Of Bihar, Patna.
2. The District Magistrate, Aurangabad.
3. The Superintendent of Police, Aurangabad.
4. The Officer-in- Charge, Obra Police Station, Daudnagar, District-
Aurangabad.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Alka Verma, Advocate
For the Respondent-State:		Mr. Md. Nadim Seraj, GP-5
		Mr. Iqbal Asif Niaze, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 03-09-2019

This application under Article 226 of the Constitution of India has been filed by the petitioner for setting aside the order dated 28.05.2019 passed by the learned Sub-Divisional Judicial Magistrate, Daudnagar in Obra P. S. Case No. 23 of 2019 whereby he has rejected the application of the petitioner dated 28.05.2019 for release of the vehicle bearing registration No. UP21BN9739.

2. Learned counsel appearing for the petitioner submitted that the order impugned is patently bad in law, as the court below has not considered the ratio laid down by the Supreme Court in the matter of **Sunderbhai Ambalal Desai vs.**



State of Gujarat since reported in **(2002) 10 SCC 283**. She contended that the learned Magistrate has also ignored the judgement of this Court in the matter of **Anil Kumar Yadav vs. State of Bihar**, since reported in **2017 (4) PLJR 455** while passing the impugned order.

3. On the other hand, learned counsel for the State submitted that since the vehicle in question was carrying 43 buffaloes and animals were chained and were placed in such a manner to subject them to unnecessary pain or suffering, the vehicle was rightly seized and the learned Magistrate rightly refused to release the same.

4. In **Sunderbhai Ambalal Desai** (Supra) relied upon by the petitioner while interpreting the powers of the court under Section 451 of the Code of Criminal Procedure (for short 'CrPC') in respect of the seized vehicles by the police in commission of various offences, the Supreme Court ruled in paras 15 to 18 as under:

“15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates



who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. 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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take



possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

5. Thus, it would be evident that 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.

6. The decision of the Supreme Court in **Sunderbhai Ambalal Desai** (Supra) has been followed by the Supreme Court in several other cases.

7. The learned SDJM while passing the order impugned has failed to appreciate that Article 141 of the Constitution of India lays down that the law declared by the Supreme Court is binding upon all courts within the territory of India.



8. The Supreme Court deprecated the practice of not following the settled legal proposition and unsettling the legal issue in **Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd**, since reported in **AIR 1997 SC 2477**, observing as under :-

“When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

9. In **Sundarjas Kanyalal Bhatija vs. Collector, Thane**, since reported in **AIR 1990 SC 261**, the Supreme Court observed as under :-

“One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge



court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority.”

10. Since the learned SDJM has completely overlooked the decision of the Supreme Court in **Sunderbhai Ambalal Desai** (Supra) while passing the impugned order, the same cannot be sustained.

11. Accordingly, the impugned order dated 28.05.2019 passed by the learned SDJM, Daudnagar in Obra P. S. Case no. 23 of 2019 is set aside and the matter is remanded back to his court to pass order afresh keeping in mind the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai** (Supra) and the observations made hereinabove.

(Ashwani Kumar Singh, J)

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