

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 562 of 2018

- Sachin Goyal S/o Shri Prahlad Sharan Aged About 32 Years, Occupation Business, R/o Khariyar Road, P. S. Jok, District Nuapura Odissa (Applicant),

---- Petitioner

Versus

- State of Chhattisgarh Through - District Magistrate Raigarh, District Raigarh Chhattisgarh (Non-Applicant)

---- Respondent

For Petitioner : Shri Arvind Sinha, Advocate

For Respondent/State : Shri Chandresh Shrivastava, Dy. AG for the State

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28/01/2019

1. Heard.
2. The present petition is against the order dated 05.02.2018 passed by the Additional Sessions Judge, Sarangarh, District Raigarh (C.G.) in criminal revision No.38/2017. By such order, the Additional Sessions Judge has affirmed the order dated 14.12.2017, whereby an application for custody of the scrap of a truck was rejected.
3. Learned counsel for the petitioner submits that on 03.12.2017 a raid was conducted and scrap of the truck bearing No.MBT 9181 was seized by invoking Section 41 (1-4) of the Cr.P.C. He further submits that the said truck was

purchased from Ram Das Sultana, who was the owner of the truck and only on the basis of the doubt/presumption that the vehicle is withheld in a criminal case the custody of the goods have been denied. He further submits that both the Courts below have failed to appreciate the fact that no case was filed under Section 379 IPC and even the FIR which has been called for with respect to allege theft of vehicle bearing No.MBT 9181 is not on record. He further submits that no charge-sheet has been filed under Section 379 & 380 IPC against any person, therefore, the question of theft is completely ruled out and no purpose would be served if the scrap of the vehicle is kept at police station as it will turn junk, therefore, the custody may be given.

4. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioner. Learned State counsel was directed to call for the entire case-diary to find out as to whether the FIR was lodged about the theft of the alleged vehicle or not? Despite several opportunity the said FIR is not produced.
5. Perused the documents. The petitioner alleged that the iron scrap belongs to the truck bearing No.MBT 9181, which was purchased from Ram Das Sultana, who was the registered owner of the truck. The affidavit of Ram Das Sultana is also on record. The case-diary which is produced before the Court do not reflect that any report was made about the theft of the truck. It shows that it was seized invoking Section 41 (1-4) Cr.P.C.
6. It is a matter of common knowledge or experience that as and when the goods

of like nature are seized and kept in police station, it not only occupy substantial space in police stations, but upon being kept in open area prone to fast natural decay on account of whether conditions. Herein the iron scrap has been seized, therefore, if it is kept in open whether condition, it will turn junk and is of no use. Considering the entirety of the facts, the reasons assigned by both the Courts below in order dated 05.02.2018 & 14.12.2017 cannot be appreciated.

7. Under the circumstances, following the principles laid down in (2010) 6 SCC 768 and (2002) 10 SCC 283, I am inclined to release the scrap in favour of the petitioner. Accordingly, the goods shall be released on the following conditions:-

(i) Before release of the scrap proper Panchnama be prepared.

(ii) Photographs of the goods should be taken and bond should also be produced that the goods would be produced if required in further investigation if are required within a reasonable time.

(iii) Proper security i.e., personal bond of Rs.2 Lakhs and like sum of surety be obtained before release of the goods.

8. In view of foregoing discussion, the petition succeeds and is allowed.

Sd/-

Goutam Bhaduri
Judge

Ashu