

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 2-9-2019****PRONOUNCED ON 3-9-2019****CRMP No. 1022 of 2019**

Shiv Prasad Gupta S/o Late Gaya Prasad Gupta Aged About 33 Years
 R/o Village- Bouripara, Shikari Road, Ambikapur, Police Station And
 Tahsil- Ambikapur, District- Surguja, Chhattisgarh

---- Petitioner**Versus**

State of Chhattisgarh through District- Magistrate, Balrampur, District-
 Balrampur, Ramanujganj, Chhattisgarh

---- Respondent

For petitioner	:	Mr. C.J.K. Rao, Adv.
For State	:	Mr. H.S. Ahluwalia, Dy. Adv. Gen.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) against the order dated 26-3-2019 passed by Sessions Judge, Balrampur at Ramanujganj in Cr. R. No. 11/2019 arising out of the order dated 1-3-2019 passed by CJM Balrampur at Ramanujganj in unregistered case No. /2019 and to pass an order to release the vehicle No. CG 15 B 6773 on Supurdnama.

2. In brief petitioner's case is that he is the registered owner of offending vehicle. Co-accused Abhay Gupta is his brother in law. Complainant Vivek Kumar lodged a complaint against co-accused Abhay Gupta and others under Section 489-B and 489-D of the Indian Penal Code (for short 'IPC'). Said vehicle was seized. He filed an application under section 457 of the Cr.P.C. before CJM Balrampur at Ramanujganj who rejected the application on 1-3-2019. Being aggrieved he preferred a revision petition before the Sessions Judge, Balrampur at Ramanujganj who also rejected the revision on 26-3-2019. Being aggrieved he preferred this CRMP.

3. In brief the case of the respondent/State is that confiscation proceeding is pending before the District Magistrate regarding offending vehicle. A letter has been written on 24-1-2019 to the effect that investigation would be conducted by National Investigation Agency (for

short 'NIA').

4. Counsel for the petitioner submitted that offending vehicle cannot be retained for indefinite period at police station. There is a possibility of damage of the vehicle if it is lying in the premises of police station. Concerned Court has not intimated about initiation of proceedings for confiscation of said vehicle by competent authority under the particular provisions of particular act. Thus, said vehicle may be given to him on supurdnama.

5. Counsel for the respondent submitted that both the courts have passed legal orders and they do not suffer from any infirmity, thus this Court should not interfere in the matter under Section 482 of the Cr.P.C.

6. It would be pertinent to mention the provisions of Section 457(1) of the Cr.P.C. which reads as under :-

“457. Procedure by police upon Seizure of property:-

(1)Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained respecting the custody and production of such property”

7. It would be notable to reproduce the provisions of Section 452(1) of the Cr.P.C. which reads thus :-

“452. Order for disposal of property at conclusion of trial:- (1)

When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.”

8. Counsel for the petitioner placed reliance of the order of coordinate bench of this Court in the matter of **Arvind Kumar Pandey -v- State of CG** [2015 (1) CGLJ 361] wherein it was held that the applicant is the registered owner of the said vehicle and the applicant has not been alleged to have been involved in commission of the offence. Vehicle remained lying unused since 10-3-2014. Hence, impugned order is set aside. The truck given in supurdnama to the applicant.

9. Hon'ble Supreme Court in the matter of **Sundarbhai Ambalal**

Desai vs. State of Gujrat [(2002) 10 SCC 283], in para para 7 and 8 observed that :-

“7. In our view, the powers under Section 451 CrPC 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 the 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. The question of proper custody of the seized article is raised in a number of matters. In **Basavva Kom Dyamangouda Patil v. State of Mysore** [(1977) 4 SCC 358] this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: (SCC p. 361, para 4)

“4. The object and scheme of the 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*. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. *There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice*. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. *The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of* by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court

exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

(emphasis supplied)

10. In the case in hand the offending vehicle was seized on 2-1-2019.

11. CJM, Balrampur at Ramanujganj rejected the supurdnama application of petitioner on the ground that a report has been sent to the District Magistrate to initiate the confiscation proceedings and also a letter has been written that investigation would be conducted by the NIA.

12. As per the order of CJM Balrampur at Ramanujganj prima facie it does not appear that he had received intimation about initiation of proceedings for confiscation of said vehicle from District Magistrate, Balrampur at Ramanujganj under a particular provisions of particular act.

13. The CJM Balrampur at Ramanujganj has not given the finding that matter is being investigated by the NIA, thus he has no jurisdiction to deal such application.

14. This is well settled legal position that if there is no bar to give any offending vehicle in supurdnama to registered owner, then offending vehicle may be given on supurdnama to the registered owner.

15. Looking to the aforesaid factual matrix, looking to the provisions of Section 457(1), 452(1) of the Cr.P.C., looking to the aforesaid observations made by the coordinate bench of this Court in the matter of **Arvind Kumar pandey** (supra) and by Hon'ble Supreme Court in the matter of **Sunderbhai Ambalal Desai** (supra), this Court finds that the impugned orders of CJM Balrampur at Ramanujganj, Sessions Judge, Balrampur at Ramanujganj suffer from illegality.

16. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions: -

“(1) Section 482 Cr.P.C. preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to

secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx

(8) xxx xxx xxx

(9) xxx xxx xxx

(10) xxx xxx xxx

17. In **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, (supra), in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. **However, this power is to be exercised sparingly and with caution.**

18. In the case in hand, it appears that there is an abuse of process or intervention is necessary to secure ends of justice. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Parbatbhai Aahir** (supra) is applicable in favour of petitioner.

19. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is a fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Narinder Singh** (supra) is applicable in favour of the petitioner.

20. Consequently, the impugned orders of CJM Balrampur at Ramanujganj and Sessions Judge, Balrampur at Ramanujganj are quashed. The matter is remitted back to the CJM Balrampur at Ramanujganj and he is directed that he shall dispose of the aforesaid supurdnama application of petitioner afresh in the light of the aforesaid

discussion, within 10 days from date of receipt of certified copy of this order.

21. Instant CRMP is disposed of accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge

P_{athak}/-