

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1346 of 2019**

1. Gulab Nabi Faras S/o Jahid Faras Aged About 52 Years Caste - Musalman, R/o Pahadkesha, Police Station - Barano, District Gumla (Jharkhand).,
2. Naeem Husain S/o Mustakeem Husain Aged About 40 Years Caste - Musalman, R/o Hathu, Police Station Baido, District Ranchi (Jharkhand)

---- Petitioners**Versus**

State Of Chhattisgarh Through District Magistrate, Jashpur,
District Jashpur Chhattisgarh

---- Respondent

For petitioners	:	Mr. Saumitra Kesharwani, Adv.
For State	:	Mr. H.S. Ahluwalia, Dy. Adv. Gen.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORDER ON BOARD****19-8-2019**

1. Petitioners have preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the order dated 22-05-2019 passed by Sessions Judge, Jashpur in Cr.R. Nos. 4/2019 and 5/2019 and releasing the offending vehicles trucks bearing registration No. JH-14-D-0739 and JH-01-BF-5279 on Supurdnama.
2. In brief petitioners' case is that petitioners are the respective registered owners of aforesaid vehicles. On 19-03-2019 police officials of Police Station Lodam district Jashpur seized aforesaid vehicles from drivers of respective petitioners on allegation that they were transporting cattle and committed offences punishable under Sections 4, 6 and 10 of The Chhattisgarh Agricultural Cattle Preservation Act, 2004 (here after called as 'Act 2004'). Their applications of Supurdnama of said vehicles were rejected by JMFC Jashpur on 22-04-2019. They preferred revisions against those orders which were also rejected.

Being aggrieved they preferred this Cr.M.P. No confiscation proceeding has been initiated regarding said vehicles. There is possibility of damage of the vehicles if said vehicles are lying in the premises of the police station.

3. In brief the respondent's case is that 40 cattle were also seized from said vehicles, which had been loaded in cruel manner and in order to take them to slaughter house. As per the provisions of Section 6 (3) of the Act 2004, vehicle seized under sub-section (2) of the Act of 2004 shall not be released by the order of the court on bond or surety before expiry of six months from the date of such seizure or till the final judgment of the court whichever is earlier and such vehicle shall also be liable for confiscation at the end of the trial.

4. Counsel for the petitioners argued that the provisions of Section 6 (3) of the Act, 2004 are not just and sufficient to reject the Supurdnama application. A vehicle cannot be retained for indefinite period at police station. To buttress his argument he placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Sundarhai Ambalal Desai vs. State of Gujrat** [(2002) 10 SCC 283], relevant para 7 and 8 are reproduced below :-

“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)

5. Counsel for the State submitted that both the subordinate courts passed right orders. It is not a fit case where intervention is called for by this Court under Section 482 Cr.P.C. Section 6 of the Act, 2004 provides that vehicle seized under sub-section (2) shall not be released by the order of the court on bond or surety before expiry of six months from the date of such seizure or till the final judgment of the court whichever is earlier and such vehicle shall

also be liable for confiscation at the end of the trial.

6. It would be noticeable to extract the provisions of Section 6 of the Act, 2004 which read as under :-

“6. Prohibition on transport of Agricultural cattle for slaughter .-

1. No person shall sell, or transport or offer to transport or cause to be transported any agriculture cattle from any place within the State to any place within the State or outside the State, for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaughtered.

2. Whenever any person transports or causes to be transported in contravention of the provisions of sub-section (1) any agriculture cattle as specified in the Schedule, such vehicle or any conveyance used in transporting such animal along with such agriculture cattle shall be liable to be seized by such authority or officer as the State Government may appoint in this behalf.

3. The vehicle or conveyance so seized under sub-section (2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, whichever is earlier and such vehicle shall also be liable for confiscation at the end of the trial.”

7. In the case in hand aforesaid vehicles are seized on 19-03-2019.

From this date neither 6 months have expired nor final judgment of the Court has been pronounced. Thus, looking to the provisions of Section 6 (3) of the Act, 2004, offending vehicles cannot be given on Supurdnama. The provisions of Section 6(3) of the Act, 2004 are the special provisions and have overriding effect on other provisions. The aforesaid provisions of Section 6(3) of the Act 2004 are out of the ambit of the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Sundarbhai Ambalal Desai (supra)**. Thus, petitioners do not get any help from the aforesaid judicial precedent.

8. 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 CrPC 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

9. 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.**

10. In the case in hand, it does not appear 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 against the petitioners.

11. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not the 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 against the petitioners.

12. Consequently, the instant CRMP is dismissed at motion stage without entertaining for final hearing.

Sd/-
(Sharad Kumar Gupta)
Judge