

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION No.19864 of 2019**

**ORDER:**

This Writ Petition is filed with the following prayer:

“The Court may be pleased to issue an appropriate writ, order or direction and more particularly one in the nature or writ of ‘Mandamus’ directing the Respondents No.1 and 2 to take strict action against the Respondents 3 and 4 and also consequently direct the Respondents immediately return the vehicle belonging to the Petitioner to him and pass such other order or orders as the Hon’ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.”

2. It is the case of the petitioner that he purchased a car i.e., Hummer H2 bearing registration No. AP 28BH 8888 (chassis number 5GRGN23229H102065) (for short ‘the subject car’) from Mr.S.Ravi Shankar-6<sup>th</sup> respondent, who is the owner of the car, for an amount of Rs.16,00,000/- on 04.07.2016. He paid an amount of Rs.5,00,000/- in cash and Rs.11,00,000/- by way of bank transfer till January, 2017 and that he is in possession and enjoyment of the subject car since then. However, on 06.09.2019, on the complaint of the 5<sup>th</sup> respondent, the respondents 3 and 4 seized the subject car from the petitioner’s residence illegally. Aggrieved by the same, present Writ Petition is filed.

3. Counter affidavit is filed by the 4<sup>th</sup> respondent denying the averments in the affidavit filed in support of the writ petition and states that they received complaint dated 20.02.2019 from the 5<sup>th</sup> respondent stating that he purchased the subject car from the 6<sup>th</sup> respondent for a sum of Rs.40,00,000/-, he paid

the entire sale consideration and that a receipt was also executed to that effect by the 6<sup>th</sup> respondent. However, on the request of the 6<sup>th</sup> respondent, the 5<sup>th</sup> respondent handed over the subject car to him and subsequently when he requested for return of the same, the 6<sup>th</sup> respondent threatened him. Pursuant to the complaint of the 5<sup>th</sup> respondent, a case in Cr.No.95/2019 under Sections 406 and 420 IPC was registered against the 6<sup>th</sup> respondent on 20.02.2019. During the course of investigation, three witnesses were examined including the petitioner and issued notice under Section 41-A Cr.P.C to the accused-6<sup>th</sup> respondent. The subject vehicle was seized from the custody of the petitioner on 06.09.2019 before the mediators and kept the same in the police station of the 4<sup>th</sup> respondent and on 07.09.2019, produced before the X Metropolitan Magistrate, Kukatpally, Cyberabad under Form-60. The said seizure was also informed to the Regional Transport Authority, Attapur. The accused-6<sup>th</sup> respondent also obtained duplicate registration certificate and when the petitioner made online registration for transfer of vehicle on 09.09.2019 to the Regional Transport Authority, Attapur, the same was not done. It is stated that investigation is under progress and after completing the same, final report would be filed before the competent court.

4. Heard Sri S.Niranjan Reddy, learned Senior Counsel appearing for Sri Omar Pasha, learned counsel for the petitioner, learned Assistant Government Pleader for

respondents 1 to 4, Sri Pasham Mohith, learned counsel for the 5<sup>th</sup> respondent.

5. Initially, after hearing the learned counsel for both parties, the matter was reserved for orders on 18.09.2019. While perusing the record, it is noticed by this Court that notice is not served on the 6<sup>th</sup> respondent. Again the matter was listed on 05.11.2019 and permitted the learned counsel for the petitioner to take out personal notice on the 6<sup>th</sup> respondent, and to file proof of service thereof. On 14.11.2019, learned counsel for the petitioner filed proof of service on the 6<sup>th</sup> respondent.

6. Though notice is served and received by the 6<sup>th</sup> respondent, there is no representation on his behalf.

7. Learned Senior Counsel submits that the petitioner purchased the subject car from the 6<sup>th</sup> respondent, who is the owner, on 04.07.2016 by paying sale consideration of Rs.16,00,000/-. He further submits that the respondents 3 & 4 basing on the complaint of the 5<sup>th</sup> respondent against 6<sup>th</sup> respondent, illegally trespassed into the house of the petitioner and seized the subject car. He submits that since the subject car has been not involved in any offence, the respondents 3 & 4 are not entitled to seize the same under Section 102 of the Cr.P.C, as such, the seizure itself is illegal. In support of his contention, he relied on the judgments reported in **State of**

**Maharashtra v. Tapas D.Neogy<sup>1</sup>, M.T.Enrica Lexie v. Doramma<sup>2</sup> and Teesta Atul Setalvad v. State of Gujarat<sup>3</sup>.**

8. Learned Assistant Government Pleader appearing for respondents 1 to 4, apart from reiterating the averments in the counter affidavit submits that the respondents 3 & 4 have discharged their legitimate duties and had taken action on the complaint of the 5<sup>th</sup> respondent by registering criminal case and seized the subject car from the residence of the petitioner, as such, no exception can be taken. He further submits that the subject car was deposited before the X Metropolitan Magistrate, Kukatpally under Form 60 on 07.09.2019 and that if the petitioner is aggrieved by the same, he has efficacious alternate remedy under Section 451 of Cr.P.C. He further submits that disputed questions of facts are involved, which cannot be adjudicated in the writ petition, as such, same is liable to be dismissed on this ground alone.

9. Though no counter affidavit is filed on behalf of the 5<sup>th</sup> respondent, learned counsel for the 5<sup>th</sup> respondent submits that he purchased the subject car from the 6<sup>th</sup> respondent for sale consideration of Rs.40,00,000/-. He submits that after selling the car, the 6<sup>th</sup> respondent took the subject car for three days and subsequently, sold to the petitioner illegally. Aggrieved by the same, he lodged complaint with the respondent No.4. He further submits that the action taken by the respondents 3 & 4 is legal and if the petitioner is having any grievance, he can file

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<sup>1</sup> (1999) 7 Supreme Court Cases 685

<sup>2</sup> (2012) 6 Supreme Court Cases 760

<sup>3</sup> (2018) 2 Supreme Court Cases 372

an appropriate application before the Court, where the vehicle was deposited, for release of the same. In support of his contention, he relied on the judgments reported in **Bharat Sanchar Nigam Limited v. Suryanarayanan<sup>4</sup>**, **Teesta Atul Setalvad v. State of Gujarat (supra)** and order of this Court in WP No.7044 of 2019, dated 04.07.2019.

10. In this case, it is to be seen that admittedly, the 6<sup>th</sup> respondent is the owner of the subject car. The petitioner purchased the same from him on 04.07.2016 for sale consideration of Rs.16,00,000/-. The petitioner paid Rs.5,00,000/- by way of cash and balance amount to be paid in installments on or before 31<sup>st</sup> January, 2017. The 6<sup>th</sup> respondent also issued a receipt on the same day to that effect. Subsequently, petitioner also paid the remaining balance of Rs.11,00,000/- by way of account transfer, which is evident from the statement of accounts filed by the petitioner. However, on the complaint of the 5<sup>th</sup> respondent dated 20.02.2019, the respondent No.4 registered a case in Cr.No.95/2019 for the offences under Section 406 & 420 of IPC against 6<sup>th</sup> respondent and seized the subject car from the possession of the petitioner on 06.09.2019 and deposited the same before the X Metropolitan Magistrate, Kukatpally under Form 60 on 07.09.2019.

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<sup>4</sup> 2018 SCC Online SC 3098

11. Before considering the question as to whether the seizure of the subject car itself is illegal or not, it is necessary to extract Section 102 of Criminal procedure Code, which reads as follows:

**“102. Power of police officer to seize certain property:**

1. Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence.
2. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.
3. Every police officer acting under Sub-Section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

Provided that where the property seized under Sub-Section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

Sub-section (1) of Section 102 of Cr.P.C provides that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. Sub-section (3) provides that police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction.

12. In ***M.T. Enrica Lexie v. Doramma*** (*supra*), the Hon'ble Supreme Court observed as follows:

“14. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other.”

13. In ***Teesta Atul Setalvad V. State of Gujarat*** (*supra*), the Hon'ble Supreme Court reiterated the principle laid down in the aforesaid judgment, and observed as follows:

“23. In *M.T. Enrica Lexie* [*M.T. Enrica Lexie v. Doramma*, (2012) 6 SCC 760 : (2012) 3 SCC (Civ) 1024 : (2012) 3 SCC (Cri) 309] , the Court noted in para 7 that agencies had completed their respective investigations and vessel was seized in exercise of power under Section 102 of the Code. In para 16, the Court noted the concession given by the counsel for the Government that the vessel was not the object of the crime or the circumstances which came up in the course of investigation that create suspicion of the commission of any offence. In that case, it was alleged that while the fishing boat was sailing through Arabian Sea, indiscriminate firing was opened from the vessel in question, as a result of which two innocent fishermen, who were on board, died. The counsel for the State had also conceded that the vessel was no longer required in connection with the offence in question. Indeed, in para 14, the Court made the following observations: (SCC p. 765)

“14. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other.”

These observations are in no way different from the proposition expounded in *Tapas D. Neogy*. [*State of Maharashtra v. Tapas D. Neogy*, (1999) 7 SCC 685 : 1999 SCC (Cri) 1352]”

14. In the instant case, admittedly, on the complaint of the 5<sup>th</sup> respondent, the 4<sup>th</sup> respondent seized the subject car from the possession of the petitioner. Since the 5<sup>th</sup> respondent

lodged complaint against 6<sup>th</sup> respondent for illegal sale of the subject car to the petitioner, the same forms part of the object of the crime under investigation by the respondents 3 & 4. In compliance of Section 102 (3) of Cr.P.C, the 4<sup>th</sup> respondent rightly deposited the subject car before the X Metropolitan Magistrate, Kukatpally under Form-60. In view of the principle laid down by the Hon'ble Supreme Court in the judgments referred to supra, the contention of the learned counsel for the petitioner that the seizure itself is illegal, cannot be accepted.

15. As rightly contended by the learned Assistant Government Pleader as well as learned counsel for the 5<sup>th</sup> respondent, petitioner can file an application before the Court, where the subject car was deposited, for release of the same under Section 451 of Cr.P.C, which deals with the disposal of property. For the sake of convenience, the same is extracted 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 any 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.”

Section 451 empowers the court before which the property is produced during an inquiry or trial to make such order as it thinks fit or for its proper custody pending the disposal of the

inquiry or trial. Section 452 of Cr.P.C provides for the disposal of the property at the conclusion of the trial, which is extracted as follows:

“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 entitle 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.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.”

16. In **Bharat Sanchar Nigam Limited v. Suryanarayanan (supra)**

the Hon’ble Supreme Court held as follows:

“16. In terms of sub-section (1) of Section 452, when an inquiry or trial before a criminal court has been concluded, the court is empowered to pass an appropriate order for its disposal by destruction, confiscation or delivery to any person claiming to be entitled to the possession thereof or otherwise. Entitlement postulates a right. The function which the Court exercises under Section 452 is of a judicial nature. In making that order, the court must undoubtedly have due regard to the entitlement claimed by the person who seeks the possession of the property.

17. We are unable to subscribe to the submission which has been urged on behalf of the first respondent that when it makes an order under Section 452, the court is merely required to determine the source from which the property was seized. Indeed, if this construction were to be placed, it would mean that the right of a person who claims title to the property would be subordinate to the claim of a person from whose possession the property was seized. A claim of title to the goods which have been seized is a relevant consideration while passing an order under Section 452. Where there are conflicting claims of entitlement to the property, the Magistrate may deal with them or, where it is found that the rival claims need to be resolved after an evidentiary trial, relegate the conflicting claimants to prove their rights and entitlements before a competent court.”

17. In similar circumstances, the Hon'ble Supreme Court in

**S.P. Forest Cell, Adyar v. Kannans Co.**<sup>5</sup>, held as follows:

“4. High Court committed error in adjudicating the question, whether the sandalwood was legally or illegally seized or was or was not in wrongful possession or whether the seized sandalwood is or is not subject matter of criminal cases. There did not exist any evidence on record to decide or conclude any such above findings. Aggrieved by this judgment of learned Single Judge, a writ appeal was preferred by the appellant which was also dismissed. Aggrieved by this present appeal is filed. As we have observed, the High Court committed error in going into the questions and recording findings which it should not have done in exercise of its power under [Article 226](#) of the Constitution of India. Not only High Court has decided disputed questions of fact but through its order has taken the property outside the reach of the Criminal Court. Accordingly, the said impugned orders are unsustainable in law. In fact the proper course open to the respondent was to move the criminal court under [Section 451](#) of Criminal Procedure Code in respect of the custody of the seized sandalwood. Admitted position is, the seized goods has been produced before the concerned criminal court, then for the custody of the same [Section 451](#) of the Criminal Procedure Code is the proper course. This Section empowers the criminal court to order for custody and disposal of property pending trial. Even if there be a dispute as in the present case whether the seized good is the property in the pending criminal case it is that criminal court alone would be competent to adjudicate and decide the issue but not the High Court under its writ jurisdiction. In view of this, we find the High Court has committed error in issuing the writ and granting the said relief to the respondent. Accordingly, the order of the learned Single Judge and the impugned judgment in writ appeal are hereby quashed. As the seized good is with respondent No. 1 he will produce the same before the Judicial Magistrate, Thiruvottiyur Chennai within three weeks from today.”

In the instant case also, the petitioner is claiming ownership of the subject car, which is seized by the 4<sup>th</sup> respondent from him and 5<sup>th</sup> respondent is claiming ownership of the same as he alleged to have purchased the same from the 6<sup>th</sup> respondent. In view of principle laid down in the aforesaid judgments, there are conflicting claims of entitlement to the subject car and admittedly, the same is deposited by the 4<sup>th</sup> respondent in terms of Section 451 (3) of Cr.P.C before the X

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<sup>5</sup> (2001) 9 Supreme Court Cases 209

Metropolitan Magistrate, Kukatpally, who has to deal with them. If the concerned Magistrate is of the opinion that the rival claims need to be resolved after an evidentiary trial, he can relegate the parties to prove their rights and entitlements before a competent court.

18. That apart, though it is argued by the learned counsel for the 5<sup>th</sup> respondent that he purchased the subject car from the 6<sup>th</sup> respondent for total sale consideration of Rs.40 lakhs, he has not filed any documentary evidence to that effect, before this Court. It is pertinent to note that the 6<sup>th</sup> respondent, who is the registered owner of the subject car, has not entered his appearance, in spite of service of personal notice. As already observed supra, though the 5<sup>th</sup> respondent entered appearance through his counsel, no counter is filed disputing the assertions of the petitioner with regard to purchase of the subject car by the petitioner. *Prima facie*, it appears that the petitioner had purchased the subject car for valid sale consideration, from the 6<sup>th</sup> respondent. He has transfer papers and filed proof of payment. Since registered owner i.e., 6<sup>th</sup> respondent is not coming forward, it appears, he is not interested as he has sold the car to the petitioner, as asserted by petitioner.

Since the subject car is produced before the X Metropolitan Magistrate, Kukatpally, it is open for the petitioner to make an application under Section 451 of Cr.P.C for release of the car. The X Metropolitan Magistrate, Kukatpally, is directed to dispose of the same, keeping in view of the above

facts and circumstances, within a period of two weeks from the date of filing such an application.

With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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**A.RAJASHEKER REDDY, J**

27-11-2019  
kvs



**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION No.19864 of 2019**

Date 27.11.2019.

kvs

