

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34704-2017

Date of Decision : July 15, 2019

M/s Fairdeal Enterprises

.... Petitioner

Versus

State of U.T. and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Sanjay Vashisth, Advocate,
for the petitioner.

Ms. Ashima Mor, APP, UT,
for respondent-State .

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for setting-aside order dated 1.5.2017 (Annexure P/22) passed Chief Judicial Magistrate, Chandigarh whereby application filed by the petitioner for release of stock of jewellery articles as detailed in inventory list and seizure memo dated 9.5.2016 (Annexures P/2 and P/3) in case bearing FIR No. 194 dated 1.5.2016 under Sections 420, 467, 468, 471, 201 and 120-B IPC registered at Police Station Sector 17, Chandigarh, has been dismissed and order dated 1.8.2017 (Annexure P/23) passed by learned Additional Sessions Judge, affirming/modifying the said order.

2. The matter in controversy relates to the release of stock of jewellery articles during the trial of the case on an application filed by

...

Shekhar Kakkar, one of the partners of the petitioner-firm. Police had taken into custody the jewellery articles belonging to the applicant from the residence of one of the partners, namely, Shekhar Kakkar and to that effect, inventory was prepared and seizure memo was issued. Challan was submitted in the Court.

3. As per the applicant, the jewellery articles belonging to the petitioner-firm have been arbitrarily and illegally taken away by the Police and the same could not be made subject matter of investigation or the case property in the present case. No person other than the petitioner-firm has any right over the stock of the jewellery articles recovered by the Police. The value of the stock of jewellery articles recovered from the residence of Shekhar Kakkar, one of the partners, is Rs.1,09,75,892/- on the basis of audited balance sheet for the financial year 2015-16. The petitioner-firm had availed the credit facility and there is no likelihood of the trial to complete in near future. So, prayer was made for release of stock of jewellery articles, but learned Chief Judicial Magistrate, Chandigarh dismissed the application. The applicant had filed revision before the Court of Sessions and learned Additional Sessions Judge, Chandigarh vide order dated 1.8.2017 affirmed the order passed by learned Chief Judicial Magistrate while observing that there was no ground to release the stock of jewellery articles to the revisionist. However, directions were issued to learned Magistrate to work-out some arrangement that the said articles be taken out from the custody of the police to be kept under the supervision of learned CJM Chandigarh or in any other better mode he deems fit and device. Present petition is challenge to the said orders.

4. Learned counsel for the petitioner contended that the stock of

...

jewellery articles is not case property in any way and the ownership of the jewellery articles is not under dispute. Final decision of the trial of case bearing FIR No. 194 dated 1.5.2016 under Sections 420, 467, 468, 471, 201 and 120-B IPC registered at Police Station Sector 17, Chandigarh is not going to effect/change the ownership of the possessory rights of the jewellery articles. Otherwise, the petitioner firm is facing proceedings under the SARFESASI Act, 2002 and being burdened with the liability of Rs.1,68 Crores and prayed that directions be issued to the trial Court for release of jewellery articles to the present petitioner.

5. Notice of the petition was issued to the respondents.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that there is no dispute on the fact that the jewellery articles recovered in this case is valuable articles and the continuous storage of the same in the police custody/*malkahana* during the trial shall diminish the value and utility of the property thereby causing great loss to the real owner. As per procedure laid down under Sections 451 and 457 Cr.P.C., the Magistrate is under legal obligation to order the release of such property to the legal owner expeditiously because continuous storage of the said valuable jewellery articles would be going to adversely effect the owner of the property.

7. As regard to production of the jewellery articles during the trial, learned Court below is well within its competency to pass an order and to impose condition or to prepare *panchnama* and take photographs of such articles or in the alternative, can issue direction to the owner to produce the same, if required, at the time of trial.

...

8. Similar matter was before Hon`ble Apex Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2003(1) R.C.R. (Criminal) 380,** wherein Hon`ble Apex Court observed as under :-

“7 . In our view, the powers under Section 451 Cr.P.C. 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 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.”

9. As per provisions of Section 451 Cr.P.C., the Courts have been duly empowered to pass such an order with regard to such property, such as :-

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary;
- (3) if the property is subject to speedy and natural decay to dispose of the same.

10. Hon`ble Apex Court while dealing with custody of valuable article and currency notes, observed as under:-

“10. To avoid a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.

...

Valuable Articles and Currency Notes

11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

- (1) preparing detailed proper panchnama of such articles;
- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- (3) after taking proper security.

13. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.P.C. to impose any other appropriate condition.”

11. In view of the above provisions as contained in Section 451 Cr.P.C. and as per view taken by Hon`ble Apex Court in **Sunderbhai**

...

Ambalal Desai's case (supra), the impugned order dated 1.5.2017 (Annexure P/22) passed Chief Judicial Magistrate and order dated 1.8.2017 (Annexure P/23) passed by learned Additional Sessions Judge, Chandigarh are set-aside and learned trial Court is directed to decide the claim of the petitioner expeditiously and preferably within a period of two months from the date of receipt of copy of this order in view of the provisions of Section 451 Cr.P.C. and as per view taken by Hon`ble Apex Court in **Sunderbhai Ambalal Desai's case (supra)**. However, as regard to production of jewellery articles during the trial stage, learned Chief Judicial Magistrate, Chandigarh shall pass appropriate orders in that regard.

12. The present petition stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

July 15, 2019
som

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes