

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.104 of 2020

Mohd. Irshad, S/o Mohd. Salauddin, aged about 39 years, R/o House No.47, Ward No.3, Radhika Nagar Road, New Krishna Nagar, Supela, Bhilai, Tahsil and District Durg (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, through Station House Officer, Police Station Durg, District Durg (C.G.)

---- Respondent

For Petitioner: Mr. Atul Pandey, Advocate.

For Respondent / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/03/2020

1. By the impugned order, the petitioner's application under Section 451 of the CrPC has been rejected finding no merit.
2. Learned counsel for the petitioner submits that the order impugned is unsustainable and bad in law and the decision of the Supreme Court in the matter of Sunderbhai Ambalal Desai v. State of Gujarat¹ has not been considered and the application has been rejected.
3. Learned State counsel opposes the petition.
4. I have heard learned counsel for the parties and considered the submissions and also went through the record with utmost circumspection.

1 AIR 2003 SC 638

5. The Supreme Court in Sunderbhai Ambalal Desai (supra) while dealing with the powers under Section 451 of the CrPC held 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.

8. The question of proper custody of the seized article is raised in number of matters. In Smt. Basavva Kom Dyamangouda Patil v. State of Mysore and another, (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:-

"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 sought 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."

6. The trial Court has not considered the aforesaid decision of the Supreme Court and rejected the application. Therefore, the impugned order is set aside and the Additional Sessions Judge is directed to consider the application of the petitioner under Section 451 of the CrPC afresh in accordance with law in line with the decision rendered by the Supreme Court in Sunderbhai Ambalal Desai (supra) and decide the same expeditiously.
7. With the aforesaid observation, the petition stands finally disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge