

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 517 of 2015****Order reserved on 23/06/2020****Order delivered on 29/06/2020**

Ram Vijay Singh, S/o Late Basdev Singh, Aged about 69 years, R/o Gangapur Khurd, P.S. Gandhinagar, Ambikapur, District Surguja, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, through Station House Officer, Police Station Lundra, District Ambikapur, Chhattisgarh.
- 2.Ramashanker Yadav, S/o Late Mahavir Yadav, Aged about 45 years, R/o Village Dorna, P.S. Lundra, District Surguja, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Sumit Singh Rathore, Advocate
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

- 1.In a proceeding initiated under Section 102 of Cr.P.C., motor vehicle No. C.G.15 A 6059 was seized by suspecting that it was involved in the commission of an offence. The petitioner herein made an application under Section 457 before the Sub-divisional Magistrate, Ambikapur for grant of interim custody, which was allowed by the Sub-divisional Magistrate, but was interfered with by

the Additional Sessions Judge, Ambikapur in the revision preferred by respondent No. 2. Questioning the order learned Additional Sessions Judge, this petition under Section 482 of Cr.P.C. has been filed by the petitioner.

2. The short issue involved in this petition is whether an Executive Magistrate (Sub-divisional Magistrate in this case) has the jurisdiction to exercise the power under Section 457 of Cr.P.C.

3. I have heard learned counsel for the parties, considered their submissions and went through the records with utmost circumspection.

4. Section 3 of Cr.P.C. provides as under :-

"3. Construction of references. - (1) In this Code, -

(a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires. -

(i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;

(ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(b) any reference to a Magistrate of the second class shall, in relation to an area outside a metropolitan area, be construed as a reference to a Judicial Magistrate of the second class, and, in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(c) any reference to a Magistrate of the first class shall, -

(i) in relation an metropolitan area, be construed as a reference to a Metropolitan

Magistrate exercising jurisdiction in that area;

(ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;

(d) any reference to the Chief Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area.

(2) In this Code, unless the context otherwise requires, any reference to the Court of a Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Court of the Metropolitan Magistrate for that area.

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code, -

(a) to a Magistrate of the first class, shall be construed as a reference to a Judicial Magistrate of the first class;

(b) to a Magistrate of the second class or of the third class, shall be construed as a reference to a Judicial Magistrate of the second class;

(c) to a Presidency Magistrate or Chief Presidency Magistrate, shall be construed as a reference, respectively, to a Metropolitan Magistrate or the Chief Metropolitan Magistrate;

(d) to any area which is included in a metropolitan area, as a reference to such metropolitan area, and any reference to a Magistrate of the first class or of the second class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area.

(4) Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters -

(a) which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any

punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

5. According to Section 3(1)(a) of the Code of 1973, any reference without any qualifying words to a Magistrate shall be construed, unless the context otherwise requires, in relation to an area outside a metropolitan area, as reference to a Judicial Magistrate.

6. In the matter of Madhusudan v. Asst. Registrar¹, it has been held by the Calcutta High Court that whenever the code uses the word "Magistrate" without any qualifying words, it shall mean a "Judicial Magistrate".

7. Similarly, Patna High Court in the matter of Sukhdev Tiwari v. State of Bihar² has clearly held that the term "Magistrate" means Judicial Magistrate. The cognizance taken by the Sub-divisional Magistrate of an offence and directing the case to be sent to Additional Sessions Judge under Section 209 CrPC is without jurisdiction.

¹ 1978 Cr.L.J. 570

² 1976 Cr.L.J. 1350

8. Section 457 of Cr.P.C. provides 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.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

9. In the above-stated provision, the word "Magistrate" has been used by the legislature without any qualifying word, then by virtue of Section 3(1)(a) of the Code, in non-metropolitan area, it shall mean "Judicial Magistrate", therefore, power and jurisdiction under Section 457 of Cr.P.C. is exercisable only and only by a Judicial Magistrate having the jurisdiction and the Executive Magistrate (Sub-divisional Magistrate) shall not have the jurisdiction to exercise power under Section 457 of Cr.P.C. and in that view of the matter, learned Additional Sessions Judge is

absolutely justified in interfering with the order of the Sub-divisional Magistrate exercising jurisdiction under Section 457 of Cr.P.C., which is strictly in accordance with law and cannot be interdicted.

10. I do not find any merit in this petition and it deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet