

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 477 of 2020**

Abhay Singh @ Buntty S/o Late Shri Prem Singh,
Aged About 42 Years, R/o Jail Colony, Babupara,
Ambikapur District Surguja, Chhattisgarh.

---Petitioner

Versus

State Of Chhattisgarh Through Police Station
Shankargarh, Rajpur, District Balrampur-
Ramanujganj, Chhattisgarh.

--- Respondent/State

For Petitioner :- Mr. Harshwardhan Parganiha, Advocate
For State :- Ms. Veena Nair, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

12/06/2020

1. Proceedings of this matter have been taken up for hearing through video conferencing from the High Court premises at Bodri, Bilaspur and with the consent of the parties matter is heard finally and disposed of by this order.
2. The petitioner herein is standing trial for commission of offence under Sections 420, 419, 467, 468, 471, 120B read with Section 34 of the IPC. He filed an application under Section 451 of

the Cr.P.C. for interim custody of two mobile phones which were seized from him, but the trial Magistrate as well as the revisional Court did not found favour with him and rejected his application which ultimately led to the filing of the present petition under Section 482 of the Cr.P.C. by the petitioner.

3. Mr. Harshwardhan Parganiha, learned counsel for the petitioner, would submit that while deciding the application of the petitioner, the principle of law laid down by the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹ has not been considered, especially paragraph 11 of the report which deals with valuable articles and currency notes, therefore, the order passed by the trial Magistrate as well as by the revisional Court is liable to be set aside.

4. On the other hand, Ms. Veena Nair, learned State counsel would oppose the submission made by learned counsel for the petitioner and submits that the present petition deserves to be dismissed.

¹ (2002) 10 SCC 283

5. I have heard learned counsel for the parties at length and perused the records.

6. Their Lordships have laid down the principle of law in Sunderbhai Ambalal Desai (supra) with regard to valuable articles and currency notes in paragraphs 11 to 14, which states as under :-

"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 CrPC at the earliest.

12. For this purposes, 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 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs or 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 CrPC to impose any other appropriate condition.

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to kept in police custody, it would be open to the SIIO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed over back to the Investigating Officer for further investigation and identification, However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation and identification. For currency notes, similar procedure can be followed. "

7. From a careful perusal of the record, it appears that the trial Magistrate as well as the revisional Court, both have not followed the imperative mandate issued by the Supreme Court in **Sunderbhai Ambalal Desai** (supra) while deciding petitioner's application for grant of interim custody of his seized articles. Consequently, the order passed by the trial Magistrate as well as by the revisional Court are hereby set aside and matter is remitted to the trial Court to consider

it afresh within three months from the date of receipt of a copy of this order.

8. With the aforesaid observation/direction, the present petition stands disposed of. No cost(s).

9. A copy of this order be sent to the concerned trial Court by e-mail/fax.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet