

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 720 of 2020**

Prasoon Shukla, S/o late M.L. Shukla, Aged about 48 years, Occupation Advocate, R/o Bemetara, Police Station and District Bemetara, Chhattisgarh.

---Petitioner

Versus

State of Chhattisgarh, through the Station House Officer, Police Station, Bemetara, District Bemetara, Chhattisgarh.

--- Respondent

For Petitioner	:-	Mr. Arvind Dubey, Advocate
For State	:-	Mr. Rahul Jha, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

21/05/2020

1. Mr. Arvind Dubey, learned counsel for the petitioner would submit that petitioner's application for grant of interim custody of his seized article has been rejected by learned Judicial Magistrate vide order dated 28/11/2019 which has been affirmed by revisional Court vide order dated 24/01/2020 (Annexure P/1) without following the mandate of the Supreme Court in the

matter of Sunderbhai Ambalal Desai v. State of Gujarat¹.

2. Mr. Rahul Jha, learned State counsel would support the impugned order and oppose the aforesaid submission made by learned counsel for the petitioner.

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

4. The Supreme Court, in the matter of Sunderbhai Ambalal Desai (supra), has emphasized the need for expeditious disposal of the application for the property seized in commission of an offence. In paragraphs 12 to 14, their Lordships, with regard to the custody of valuable articles and currency notes, have held as under :-

“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 panchanama 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.

¹ (2002) 10 SCC 283

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 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 Cr.P.C. 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. "

5. In my considered opinion, since the Judicial Magistrate has not considered the application filed by the petitioner in its proper perspective, therefore, the impugned order passed by the revisional Court as well as the order passed by the Judicial Magistrate are hereby set aside and the matter is remitted back to learned

Judicial Magistrate to consider it afresh expeditiously and in accordance with law in light of the aforesaid decision rendered by the Supreme Court in Sunderbhai Ambalal Desai (supra).

6. With the aforesaid observation/direction, the present petition under Section 482 of the Cr.P.C. is allowed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet