

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 1002 of 2020**

Atul Rathore S/o Shri Mahendra Rathore, Aged about 35 years, R/o Altamas Colony, Qtr. No. 55, Narmada Nagar, Police Station Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh.

---Petitioner

Versus

State of Chhattisgarh, through District Magistrate, Raipur, District Raipur, Chhattisgarh.

---Respondent

For Petitioner :- Mr. Dharmesh Shrivastava, Advocate
For State :- Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

27/11/2020

1. By the impugned order, learned Additional Sessions Judge has affirmed the order of learned Judicial Magistrate rejecting the application for grant of interim custody of the mobile phone seized from the possession of the applicant/petitioner herein.
2. Mr. Dharmesh Shrivastava, learned counsel for the petitioner, would submit that both the Courts below are absolutely unjustified in rejecting the application for interim custody of the mobile phone filed by the petitioner only on the ground

that it will be used during the course of the trial whereas investigation has already been completed and it has culminated into charge-sheet for which he is facing trial for offences punishable under Sections 384, 507, 120-B, 389 and 201 of IPC and Section 68 of Information Technology Act, 2000. He would also submit that the decision rendered by the Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat**¹ has also not been considered by learned Judicial Magistrate while rejecting petitioner's application, therefore, it would be expedient to set aside the impugned order and direct for interim custody of the mobile phone in favour of the petitioner.

3. Mr. Jitendra Pali, learned Deputy Advocate General, would submit that both the Courts below are absolutely justified in rejecting petitioner's application which does not call for interference in exercise of jurisdiction under Section 482 of CrPC.

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

¹ (2002) 10 SCC 283

5. Their Lordships have laid down the principle of law in Sunderbhai Ambalal Desai (supra) with regard to valuable articles and currency notes in paragraphs 7 to 10, which states 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 panchanama 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 properly 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. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr., [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 subject 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."

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

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

6. From a careful perusal of the record, it appears that learned Judicial Magistrate as well as learned Additional Sessions Judge, both have not followed the imperative mandate issued by the Supreme Court in Sunderbhai Ambalal Desai (supra) while rejecting petitioner's application for grant of interim custody of his seized mobile phone. Consequently, the order passed by the Judicial Magistrate as well as by the Additional Sessions Judge are hereby set aside and the matter is remitted to the Additional Sessions Judge, Raipur to consider it afresh in accordance with law declared by the Supreme Court in Sunderbhai Ambalal Desai (supra) within 30 days from the date of receipt of a copy of this order.

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

8. A copy of this order be sent to the concerned Additional Sessions Judge by e-mail/fax for needful and compliance.

Sd/-
(Sanjay K. Agrawal)
Judge