

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.1373 of 2019

Kishore Pathak, S/o Shri Narendra Pathak, aged about 50 years, R/o Village Khaira, Tahsil and District Bilaspur (C.G.), presently residing at Saraswati Shishu Mandir Staff Quarter, Malaband, Police Station Koni, Tahsil and District Bilaspur (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, Through Station House Officer, Koni and District Magistrate, Bilaspur, District Bilaspur (C.G.)

---- Respondent

For Petitioner: Mr. Ashutosh Trivedi, Advocate.

For Respondent / State: Mr. Sunil Otواني, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/06/2020

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner's application for custody of valuable articles has been rejected by the trial Magistrate as well as by the revisional Court against which this petition has been preferred.
3. Learned counsel for the petitioner would submit that without taking into consideration the principles of law laid down by the Supreme Court in the matter of Sunderbhai Ambalal Desai v. State of Gujarat¹, particularly paragraphs 11 to 14 of the said report, the application for custody of valuable articles has been rejected.
4. On the other hand, learned State counsel opposes the petition and supports the impugned orders.

1 (2002) 10 SCC 283

5. I have heard learned counsel for the parties and considered their submissions and also went through the record with utmost circumspection.

6. In paragraphs 11 to 14 of the report, their Lordships of the Supreme Court in Sunderbhai Ambalal Desai (supra) have laid down the procedure to be followed with regard to the interim custody of valuable articles and currency notes as well. The procedure laid down by their Lordships in Sunderbhai Ambalal Desai (supra) in respect of valuable articles reads as follows: -

“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, the 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 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.

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 of 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 be kept in police custody, it would be open to the SHO 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 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 purposes of investigation and identification. For currency notes, similar procedure can be followed.”

7. From a careful perusal of the aforesaid decision, it is quite vivid that the principles of law laid down in Sunderbhai Ambalal Desai (supra) have not been followed by the two Courts below in its letter and spirit and the application for interim custody of valuable articles has been rejected which is not sustainable in the eyes of law. Consequently, the impugned order passed by the trial Magistrate as well as by the revisional Court are set aside and the matter is remitted to the trial Magistrate for passing order afresh in accordance with law after following the principles laid down by the Supreme Court in Sunderbhai Ambalal Desai (supra) and after hearing the interested parties, within 45 days from today.
8. With the aforesaid observation, the petition stands finally disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge