

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 1880 of 2019**

Smt. Sabina Ram @ Sabina Khalkho (S. Khalkho),
Wd/o Late Dr. H.N. Ram, Aged about 41 years, R/o
Raghunath, District Hospital, Ambikapur Campus,
Ambikapur, District Surguja, Chhattisgarh.

---Petitioner**Versus**

1. Smt. Hirmaniya Bai Wd/o Late Shivbhajan, Aged
about 75 years, R/o Village Post Sewari Khash,
Khatakpara, Police Station and Tahsil Rajpur,
District Balrampur, Chhattisgarh.

2. Dr. Smt. Pratima Kujur, Wd/o Late Dr. Harinath
Ram, R/o Pt. Jawaharlal Nehru Medical College
Campus, Raipur, Chhattisgarh.

Now at present R/o Medical College Campus,
Rajnandgaon, District Rajnandgaon, Chhattisgarh.

3. State of Chhattisgarh, through Incharge of Police
Chowki, Manipur (under Police Station Ambikapur),
District Surguja, Chhattisgarh.

--- Respondents

For Petitioner	:- Mr. Prasoon Agrawal, Advocate
For Respondents 1 & 2	:- Mr. Vivek Bhakta, Advocate
For State	:- Mr. Ravi Bhagat, Dy. G.A.

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 dispute herein relates to the vehicle i.e. Tata Sumo Gold bearing No. CG 15/CL 8112 purchased and owned by Dr. H.N. Ram who died on 21/12/2014. The petitioner claims to be the legally wedded wife of late Dr. Ram whereas respondent No. 1 is his mother and respondent No. 2 is said to be the ex-wife of late Dr. Ram. After his death, the dispute arose with regard to the interim custody of the said vehicle which was seized under the provisions of Section 102 of the Cr.P.C.
3. In the first round of litigation i.e. in proceedings under Section 457 of the Cr.P.C., learned trial Magistrate directed for the custody of the vehicle in question to be given to the petitioner which was maintained by the revisional Court in the revision preferred by respondent No. 1, but thereafter, this Court, in Cr.M.P. No. 614/2015, remanded back the matter to the Chief

Judicial Magistrate, Ambikapur to hear the parties concerned and pass a reasoned and speaking order.

4. Consequently, this time, learned trial Court passed an order granting custody of the said vehicle to respondent No. 1 i.e. the mother of deceased Dr. Ram. The said order was challenged by the petitioner by way of revision but the revisional Court also affirmed the order of the trial Court and dismissed the revision against which the present petition has been preferred by the petitioner i.e. wife of deceased Dr. Ram.

5. Mr. Prason Agrawal, learned counsel for the petitioner, would submit that petitioner is the duly and legally wedded wife of late Dr. Ram who got married with him after he and his first wife i.e. respondent No. 2 got mutually divorced, as such, she is the person who is entitled for the custody of the vehicle in question.

6. On the other hand, Mr. Vivek Bhakta, learned counsel for respondents No. 1 and 2, would support the impugned order.

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

8. Section 457 of the 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. A careful perusal of the aforesaid provision would show that the question as to who is the person entitled for possession of the vehicle in question has to be determined by the Court dealing with the application under Section 457 of the Cr.P.C.
10. Both the Courts below have noticed that the dispute regarding succession of the property of late Dr. Ram is pending adjudication before the jurisdictional succession Court and in that view of the matter, learned trial Magistrate has directed for delivery of possession of the vehicle to respondent No. 1 who is admittedly, the mother of late Dr. Ram holding her to be the person entitled to receive possession of the vehicle in question purchased and owned by late Dr. Ram.
11. It is true that since the dispute involved with regard to the succession of the property of deceased Dr. Ram is still pending consideration before the succession Court and the succession Court has yet to deliver its verdict, therefore, admittedly, respondent No. 1 i.e. mother of the deceased is the right person who is entitled for

possession of the vehicle. If the petitioner or respondent No. 2, either one of them is handed over the possession of the said vehicle and if they sell it in the open market, the position would be much worsened, therefore, such a case is totally impermissible.

12. As such, the trial Court as well as the revisional Court are absolutely justified in granting possession of the vehicle in question to respondent No. 1 i.e. mother of deceased Dr. Ram. Any order passed shall be subject to the final outcome of the succession proceeding pending before the succession Court. It would be open to the petitioner to move the appropriate Court, if so advised after the verdict of the succession Court is delivered and if it ultimately turns out to be in her favour.

13. With the aforesaid modification/direction, the present petition under Section 482 of the Cr.P.C. stands disposed of. It is made clear that this Court has not made any observation on the merits of the matter and after the verdict of the succession Court, petitioner/respondents would be entitled to move the Chief Judicial Magistrate,

Surguja for appropriate order regarding the custody of the vehicle, if cause is available.

14. Certified copy, as per rules.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet