

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUROrder Reserved on :26.06.2020Order Delivered on: 29.06.2020**Cr.M.P.No.260 of 2016**

Jagdambe Coal Trading Company, Village – Pendarwa,
 through Proprietor, Rajesh Kotwani, S/o Tahalram
 Kotwani, aged about 38 years, Resident of Nehru
 Nagar, P.S. Civil Line, District Bilaspur (CG)

---Petitioner**Versus**

State of Chhattisgarh, Police Station – Ratanpur,
 District- Bilaspur, through Collector, (District-
 Magistrate) Bilaspur (CG)

---Respondent

For Petitioner	:	Mr.Arvind Sinha, Advocate
For Respondent	:	Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The petitioner's application for interim custody of 265 metric ton of coal has been rejected by the trial Court as well as by the revisional Court, against which, this petition under Section 482 of the CrPC has been filed.
2. Mr.Arvind Sinha, learned counsel for the petitioner, would submit that the petitioner is owner of seized coal i.e. 265 metric ton and therefore, he is entitled for custody of the

said coal as the matter is pending for last four years before the trial Court and the trial Court has not considered the principle of law laid down by the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹ while rejecting the application, as such, the petitioner may be granted interim custody of the said coal by setting aside the order of the trial Court as well as of the revisional Court.

3. Mr. Ravi Bhagat, learned Deputy Government Advocate for the respondent/State, would support the impugned order and submit that it is the case where low grade coal has been mixed in high grade coal and therefore, offence of adulteration in coal has been registered against the petitioner and other co-accused persons and if the coal will be given in interim custody, its nature would be changed and it would be difficult to ascertain as the matter is still pending before the trial Court.

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

¹ 2002(10) SCC 283

5. The Supreme Court in the matter of **Sunderbhai**

Ambalal Desai (supra) has held that as under:-

"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 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 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 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 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."

6. It appears that the principle of law laid down in Sunderbhai Ambalal Desai (supra) has not been considered by the trial Court and rejected the application, which has been affirmed by the revisional Court.
7. Reverting to the facts of the present case, it is correct to say that the law laid down by the Supreme Court in Sunderbhai Ambalal Desai (supra) has not been considered at all by both the Courts below and therefore, it deserve to be set aside.
8. Accordingly, the impugned order dated 28.7.2015 passed by the First Additional Sessions Judge, Bilaspur in Criminal Revision No.142/2015 and the order dated 2.7.2015 passed by the Judicial Magistrate First Class, Kota are hereby set

aside. The matter is remitted to the trial Court to consider and dispose of the application keeping in view the principle of law laid down by the Supreme Court in Sunderbhai Ambalal Desai (supra) after hearing both the parties within two months from the date of receipt of a copy of this order. The respondent is at liberty to raise a plea that it is case of fixing low grade coal in high grade coal and that plea will also be considered by the trial Court in accordance with law.

9. The CrMP is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-