

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20509 of 2019

Arising Out of PS. Case No.-65 Year-2017 Thana- SACHIVALAYA District- Patna

Vishal Babu Mathur, Male, aged about 23 years, Son of Prem Babu Mathur,
Resident of Village- Chainpur, Mobarakpur, P.S.- Siswan, District- Siwan.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr.Shailendra Kumar Singh, Advocate.
For the Opposite Party : Mr.Parmeshwar Mehta, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

3 24-03-2021 In the order dated 19.02.2021, due to inadvertent mistake, the order no. '3' has been created in place of order no. '2'.

Considering the same, let in the order dated 19.02.2021, the order no. '3' be read as order no. '2'.

Accordingly, the order dated 19.02.2021 is modified to the extent as indicated above.

This application has been filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'). The petitioner has sought for quashing of the order dated 25.10.2018, passed by the learned Additional Sessions Judge-X, Patna, in Criminal Revision No. 92 of 2018, (arising out of Sachiwalay P.S. Case No. 65 of 2017, lodged under Sections 420/120(B) of the Indian Penal Code and under Section 66 of



the Information Technology Act) by which the learned court below dismissed the aforementioned Criminal Revision, which was preferred by the petitioner challenging the order dated 04.01.2018, passed by learned A.C.J.M.-II, Patna, whereby the learned A.C.J.M.-II, Patna, rejected the application filed on behalf of the petitioner for release of seized articles in connection with Sachiwaly P.S. Case No. 65 of 2017. The prayer of the petitioner before this Court is for release of articles seized in connection with the aforesaid Sachiwalay P.S. Case No. 65 of 2017 which having been lodged on the written complaint of the Deputy Chief, Computer, Headquarter, Bihar State Food and Civil Supplies Corporation Ltd., Patna, alleging therein that some unknown person has fraudulently created a website www.sfcbihar.net and has opened a Ration Card Enrolment Centre, whereas no such website has been opened by the Bihar Government or Bihar State Food and Civil Supplies Corporation Ltd. Further, it has been alleged that by opening of such website innocent people of the State of Bihar having been deceived, thus cheated. The name of the petitioner transpired during the course of investigation and incriminating articles were seized from the possession of the petitioner, who also received the copy of seizure list. Seized articles are mentioned



hereunder:

1. A black coloured Lenovo Laptop.
2. Samsung Duos Mobile containing Sim Card.
3. Samsung Mobile.
4. Pan Card in the name of the petitioner.
5. An Identity Card in the name of the petitioner.
6. A S.B.I. Passbook in the name of the petitioner.
7. An Axis Bank Passbook in the name of the petitioner.
8. A Pen Drive of 8 GB of Sony Company.
9. A black coloured Modem.
10. Cash of Rs. 1 Lac.
11. S.B.I. ATM Card in the name of the petitioner.
12. Aadhar Card in the name of the petitioner.
13. A.T.M. Card of Bank of Baroda.

The counsel for the petitioner submitted that the petitioner is on bail, on submission of charge sheet, cognizance has been taken and the petitioner is facing trial. He further submitted that both the learned trial court and the court of learned Additional Sessions Judge-X, Patna, have failed to consider that the articles seized are personal belonging of the petitioner owned by him and they have no concern with the



criminal case and hence they ought to be released in favour of the petitioner.

Learned counsel for the State has drawn the attention of this Court to the orders passed by the courts below and submitted that from perusal of the order passed by the learned trial court, it appears that a report was called for from the concerned police station and in the said report, it has been submitted that the seized articles might be required by the court for evidence in the instant case. It has been observed by the learned trial court that the seized electronic materials are subject matter of this case and any tampering with the electronic articles by any person would be detrimental to the proper adjudication of this case. The court of learned Additional Sessions Judge-X, Patna, while hearing the Revision Petition has endorsed the reasoning given by the learned trial court and has dismissed the revision petition finding no illegality or irregularity in the order of the learned trial court.

Section 451 of the Cr. P.C. deals with the custody and disposal of the property pending trial in certain cases. In this regard, it is necessary to recapitulate the principles laid down by the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai & Ors. Vs. State of Gujarat, reported in (2002) 10**



SCC 290. In paragraphs 5 and 7 of the judgment the Hon'ble Apex Court, while dealing with the powers of Magistrate has held the following:

“5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary;

(3) if the property is subject to speedy and natural decay to dispose of the same...”

“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 panchnama 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 property 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.”

The Hon'ble Supreme Court in the case of **General Insurance Council and Ors. Vs. State of Andhra Pradesh &**



Ors., reported in (2010) 6 SCC 768 has reiterated again the principles which are required to be kept in mind while exercising the powers under Section 451 of the Cr. P.C.

After hearing both the sides and keeping in mind the principles laid down by the Hon'ble Supreme Court in the above referred cases and considering the facts of the case and nature of goods seized and its connection with the alleged Cyber crime of running a forged website necessitates to keep the seized electronic articles in the safe custody till the recording of evidence in the case. The learned courts have rightly taken into consideration the report submitted by the concerned police station that the seized items may be used as evidence in this case. The possibility of tampering with electronic records cannot be allayed at all, and, if so happens, the same will be an impediment in proper adjudication of the case. Therefore, in my considered opinion, the release of electronic articles seized in this case cannot be permitted at this stage. However, the rest of the items may be released in favour of the petitioner. Hence, the court below is directed that Pan Card, Identity Card, S.B.I. Passbook, Axis Bank Passbook, Cash of Rs. 1 Lac and Aadhar Card of the petitioner be released in his favour on the condition that the petitioner shall file an affidavit before the learned court



below stating therein that as and when it would be required, the articles released in his favour must be produced by him before the trial court and no tampering or altering whatsoever will be done by him with the articles released in his favour. Further, the petitioner shall also execute a personal bond with surety of Rs. 1 Lac to the satisfaction of the court below.

With the aforesaid observation and direction, this application stands disposed of.

(Sudhir Singh, J)

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