

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 42 of 2021

- Smt. Lata Diwan W/o Shrawan Kumar Diwan Aged About 34 Years R/o Village Mukta, Police Station Dhabhra, District Janjgir Champa Chhattisgarh.

----- Petitioner

Versus

- State of Chhattisgarh Through Thana In Charge Chandrapur, District Janjgir Champa Chhattisgarh.

----- Respondent

For Petitioner :- Mr. Rajendra Tripathi, Adv.
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

20/01/2021

1. Learned counsel for the petitioner would submit that the petitioner is the registered owner of the vehicle which was found involved in commission offence under Sections 376, 509b, 506 of IPC, Sections 67, 67A of IT Act and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act and petitioner is not accused in this crime.

2. The petitioner made an application for grant of interim custody of the vehicle in question before the concerned Special Judge and the concerned Special Judge has rejected the application on 28.12.2020, against which the instant petition under Section 482 of the CRPC has been preferred by the petitioner.

3. Learned counsel for the petitioner would submit that the learned Court below erred in not advertent the decision of the Supreme Court in the matter of Sunderbhai Ambalal Desai v. State of Gujarat¹ and rejected the application of the petitioner.

4. On the other hand, learned State counsel would support the impugned order and oppose the submissions made by learned counsel for the petitioner.

5. I have heard learned counsel for the parties, considered their rival submissions

¹ 2002(10)SCC 283

herein-above and went through the records with utmost circumspection.

6. The learned Special Judge has not considered the decision of the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai* (supra) in which, with regard to grant of custody of the vehicle, it has been held as under:-

"15.Learned Senior Counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16.However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17.In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of the applications for return of such vehicles.

18.In case where the vehicle is not claimed by the accused, owner, or the insurance

company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

7. In view of that the order passed by the Special Judge, (Atrocities Act), District Janjgir-Champa, C.G. is hereby set aside and the matter is remitted to the concerned Court below to decide the application for interim custody afresh in the light of the decision rendered by the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai* (supra).

8. With the aforesaid observation/direction, the instant petition stands finally disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit