

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1154 of 2020**

Smt. Chandrakanta Tandon, W/o. Tukaram Tandan, aged about 30 years, R/o. Village Dhovanipara, Kurud, Police Station & Tahsil Kurud, Distt. Dhamtari (CG)

---- Petitioner

Versus

State of Chhattisgarh through District Magistrate, Dhamtarim District Dhamtari (CG)

---- Respondent

For Petitioner	: Shri Shivendu Pandya, Advocate
For Respondent/State	: Shri Ravi Bhagat, Dy. Govt. Advocate

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

03.3.2021

1. Heard.
2. Offending vehicle Truck bearing registration No.CG 06 M 0944 loaded with iron scrape was found involved in commission of offence punishable under Section 379 of the IPC. The petitioner, who is the owner the iron scrape, filed application under Section 457 of the CrPC for interim custody of the aforesaid iron scrape before the Judicial Magistrate First Class, Kurud, Distt. Dhamtari, who in turn, rejected the said application, however, released the vehicle Truck to its owner. By the impugned order, learned Additional Sessions Judge, Dhamtari, has affirmed the order of learned Judicial Magistrate rejecting the application for grant of interim custody of the iron scrape.
3. Learned counsel for the petitioner would submit that the petitioner is owner of seized scrape and both the Courts below are absolutely unjustified in

rejecting the application for interim custody of the scrape filed by the petitioner mainly on the ground of difference in weighment of the scrape seized and the weighment shown in two purchase receipts submitted by the petitioner. He would also submit that the decision rendered by the Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat**¹ has also not been considered by learned Judicial Magistrate while rejecting petitioner's application, therefore, it would be expedient to set aside the impugned order and direct for interim custody of the iron scrape in favour of the petitioner.

4. On the other hand, learned counsel for the State would submit total 4 ton 680 Kg scrape has been seized from the offending vehicle but the petitioner has produced purchase receipt for only 3 tons of scrape, thereby she failed to prove her ownership, therefore, both the Courts below are absolutely justified in rejecting petitioner's application which does not call for interference in exercise of jurisdiction under Section 482 of CrPC.

5. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

6. Their Lordships have laid down the principle of law in **Sunderbhai Ambalal Desai** (supra) with regard to valuable articles in paragraph 7, which states as under :-

“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;

1 (2002) 10 SCC 283

3. If the proper panchanama 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 properly 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.”

7. Reverting to the facts of the case in the light of above stated legal position, it appears that both the Courts below have rejected the application of the petitioner mainly on the ground of difference in weighment of seized article and that of purchase receipts produced by the petitioner, but it has not been held that the petitioner is not the owner of the seized article scrape. Both the Courts below have not followed the imperative mandate issued by the Supreme Court in **Sunderbhai Ambalal Desai** (supra) while rejecting petitioner's application for grant of interim custody of her seized iron scrape. Consequently, the order passed by the Judicial Magistrate as well as by the Additional Sessions Judge are hereby set aside and the matter is remitted to the Additional Sessions Judge, Dhamatari to consider it afresh in accordance with law declared by the Supreme Court in **Sunderbhai Ambalal Desai** (supra) within 30 days from the date of receipt of a copy of this order.

8. With the aforesaid observation/direction, the present petition stands disposed of. No cost(s).

9. A copy of this order be sent to the concerned Additional Sessions Judge by e-mail/fax for needful and compliance.

Sd/-

(Sanjay K. Agrawal)

Judge