

**THE HON'BLE SRI JUSTICE K.LAKSHMAN**

**Criminal Revision Case No.616 of 2020**

**ORDER:**

This Criminal Revision Case, under Sections 397 & 401 of Cr.P.C., is filed by the petitioner/claimant, to set aside the order, dated 22.10.2020, passed in CrI.M.P.No.217 of 2020 in Cr.No.425 of 2019 of Shadnagar Police Station, by the Additional Judicial Magistrate of First Class.

2. Heard Sri J.Prabhakar learned senior counsel appearing for the petitioner/claimant, Smt. K.Kalyani, learned counsel appearing for the 2<sup>nd</sup> respondent and learned Public Prosecutor appearing for the 1<sup>st</sup> respondent-State. Perused the record.

3. The petitioner herein is claimant and owner of the seized property in Cr.No.425 of 2019. He has filed an application under Section 451 of the Cr.P.C. vide CrI.M.P.No.217 of 2020 in Cr.No.425 of 2019 before the Court below seeking interim custody of the said property. The Court below has dismissed the said petition vide order dated 22.10.2020 on the ground that the contents of the panchanama and remand report does not clearly disclose that he is the owner of the said properties until trial is commenced, if the petitioner appears before the said Court and identifies his property in the witness box and his ownership claiming his rights over the property decided by the said Court.

4. The petitioner herein has impleaded the defacto-complainant in the present Revision as respondent No.2, who filed

affidavit stating that he has no objection in releasing the property in favour of the petitioner herein.

5. The petitioner herein has also filed third party affidavit of Sri Sachin Vilas Khadam, the son-in-law of the petitioner herein and also L.W.6. He has also stated that he has no objection in releasing the property in favour of the petitioner herein.

6. It is relevant to note that the petitioner herein has filed CrI.P.No.1513 of 2020 seeking interim custody of the cash, seized in the present crime. The said CrI.P.No.1513 of 2020 was allowed by this Court vide order dated 21.09.2020 with certain conditions.

7. The Hon'ble Apex Court in **SUNDERBHAI AMBALAL DESAI V/s. STATE OF GUJARAT**<sup>1</sup> and this Court in catena of decisions, held that seized property has to be returned to the owner on verification of the ownership and documents and on imposition of certain terms and conditions. It was also held that keeping the seized property in the custody of Police will not serve any purpose. In the present case, the Court below, without considering the said ratio laid down by the Hon'ble Supreme Court and this Court, has dismissed CrI.M.P.No.217 of 2020 vide order dated 22.10.2020.

8. In view of the said submissions and also considering the no objection affidavits filed by the 2<sup>nd</sup> respondent and third party (L.W.6), this Criminal Revision Case is allowed. The Impugned order dated 22.10.2020 passed in CrI.M.P.No.217 of 2020 in Cr.No.425 of 2019 of Shadnagar Police Station, by the Additional Judicial Magistrate of First Class, is hereby set aside and the matter

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<sup>1</sup>. (2002) 10 SCC 283

is remanded back to the said Magistrate with a direction to give interim custody of the seized property specifically mentioned in the panchanama and also list of properties mentioned by the petitioner in his application filed under Section 451 of the Cr.P.C. on imposition of certain conditions to his satisfaction.

9. Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

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**K.LAKSHMAN, J**

Date: 14.12.2021.

Note: Issue copy by 16.12.2021.  
b/o.vvr