

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19004 of 2017

Arising Out of PS. Case No.-38 Year-2016 Thana- MAHILA P.S. District- Siwan

Vijay Kumar Giri Son of Late Nand Kishore Giri, resident of Mohalla-
Ramdev Nagar, Ward No. 16, P.S.- Siwan Muffasil, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Punam Kumari, Officer-in-Charge of Siwan Mahila Police Station, Siwan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mahesh Narayan Parbat
For the Opposite Party/s : Mr.Umeshanand Pandit, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 30-06-2022 Heard counsel for the parties.

This is an application filed on behalf of petitioner for quashing the order dated 16.02.2017 passed by learned Sub-Divisional Judicial Magistrate, Siwan in Trial No. 4011 of 2017 arising out of Siwan Mahila PS Case No. 38 of 2016 whereby he has been pleased to reject the application filed by the petitioner as per provision of Section 457(2) of the Code of Criminal Procedure Code for release of his Restaurant removing the seal in his favour.

Prosecution case in brief is that pursuant to secret information a raid was conducted in Ankur Restaurant where inside cabin no. 1 one boy and one girl was found in



compromising position. Again in cabin no. 2 and 3 more couple were found in compromising condition. It is further alleged that many people were caught while fleeing away from the restaurant. Condoms and other articles including cash were seized. Owner of the restaurant and other persons were apprehended by the police.

It is submitted on behalf of petitioner that no such offence as alleged in the FIR has been committed by the petitioner. It is further submitted that during course of investigation, the police has put seal on the Ankush Restaurant of the petitioner on 06.06.2016 itself. Thus, on 18.10.2016 an application was filed on behalf of petitioner for opening of seal of his Ankush Restaurant mentioning therein that he was running the said Restaurant duly authorized by the Health Department of Government of Bihar having its registration under FSS Act 2006 bearing registration no. 20412261000279 which was valid for five years i.e. 17.01.2012 to 16.12.2017 and due to seal he is suffering great loss. It is further submitted by him that various articles, as described in the said application, were also lying inside the sealed premises, including sofas, Deep Freezer, Ovens etc. and were rotting in absence of proper care and cleaning. It is further submitted that no purpose would



be served by keeping the Restaurant under seal. An application was filed by the petitioner before Sub-Divisional Judicial Magistrate, Siwan for release upon which a report was called by the learned Sub-Divisional Judicial Magistrate from the SHO Siwan Mahila PS who submitted the said report on 21.12.2016 with only statement that in this case Investigating Officer had submitted charge sheet no. 153/16 on 30.11.2016 in which the seized restaurant was exhibit. The said charge sheet no. 153/16 against the petitioner and two others, even though he was not present in Siwan and other accused persons were not sent up for trial.

After hearing the parties learned counsel for Sub-Divisional Judicial Magistrate pleaded to reject the said application vide order dated 16.02.2017 (impugned order) on the ground that petitioner is owner of the restaurant and the premises in question is to be used as piece of evidence and intended to be used as exhibit in trial.

Counsel for petitioner submits that order passed by Sub-Divisional Judicial Magistrate impugned order dated 16.02.20217 is erroneous and without application of mind. The court below has failed to appreciate the provision of law. No useful purpose would be served to keep the premises under seal



which is rotting in absence of proper care and cleaning.

However, counsel for the State opposed the prayer for bail of the petitioner and submitted that the restaurant in question is exhibit and it would not proper to release or unseal the restaurant and other articles during pendency of this case.

Chapter XXXIV of the Code of Criminal Procedure deals with powers of courts in matter of disposal of property.

Section 451 Cr.P.C empowers the court to pass an interim order for custody of any property pending inquiry or trial produced before the court or regarding which offence appears to have been committed or appears to have been used for the commission of an offence. whereas, Section 457 Cr.P.C enables a Magistrate to pass an order for disposal of property seized by the police, but not produced before the court during trial.

In the case of **Sunderbhai Ambalal Desai [2002(10) SCC 290]** the scope of Section 451 and 457 of Cr.P.C was examined and held that powers under Section 451 Cr.P.C should be exercised expeditiously and judiciously.

In para 5 and 7 of *Sunderbhai Ambalal Desai (supra)*, the Supreme Court observed as under:-

“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 dispose of, after recording such evidence as it thinks necessary;

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

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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;

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.”

In the aforesaid case, the Supreme Court, accordingly directed the criminal court to exercise the power under Section 451 of the Code of Criminal Procedure for return of the seized articles on some conditions pending final decision of the criminal case. With regard to the return of the seized vehicle during pendency of the criminal case the Supreme Court has observed as follows in paragraph 17 of the said judgement:-

“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 applications for return of such vehicles.”



Considering the rival submissions of the parties and materials available on record and the law laid down in the case of Sunderbhai Ambalal Desai (supra) in the opinion of this Court while considering the application for release/release of premises in question, learned Sessions Judge-cum-Sub-Divisional Judicial Magistrate, Siwan in Trial No. 4011 of 2017 arising out of Siwan Mahila PS Case No. 38 of 2016 did not appreciate statutory provision contained in Chapter XXXIV of Code of Criminal Procedure, as such the impugned order is not sustainable. Hence, the order dated 16.02.2017 learned Sessions Judge-cum-Sub-Divisional Judicial Magistrate, Siwan is hereby quashed.

Accordingly, the application for quashing is allowed.

Sub-Divisional Judicial Magistrate, Siwan is directed to ensure that the premise is released/unsealed and possession of the restaurant be handed over to the petitioner within two weeks from the date of receipt/production of a copy of this order on furnishing title deed along with two local sureties to the satisfaction of Sub-Divisional Judicial Magistrate, Siwan, subject to the condition that petitioner would not alienate or deal with the premise in question in any manner, so as to create a third party interest or prejudice the right of State during



pendency of the case.

(Prabhat Kumar Singh, J)

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