

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
In The Circuit Bench at Jalpaiguri
Appellate side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R 111 of 2022
Tauhid @ Tauhaid
-Vs-
The State of West Bengal

For the Petitioner	: Mr. Arijit Ghosh, Adv. Ms. Swarnali Ghosh Sengupta, Adv.,
For the State	: Mr. Aditi Shankar Chakraborty, Ld. App Mr. Niloy Chakraborty, Adv.,
Hearing concluded on	: 9 th June, 2022
Judgment on	: 14 th June, 2022

Bibhas Ranjan De, J:

1. This revisional application is directed against the order dated 07.12.2021 passed by the Learned Additional Chief Judicial Magistrate, Siliguri, in G.R Case no. 3268 of 2021 arising out of Phansidewa Police Station Case No.346 of 2021 dated 24.07.2021, by which Learned Magistrate refused to return the seized vehicle to the petitioner during pendency of the criminal case.
2. Learned Counsel appearing on behalf of the petitioner submits that the vehicle bearing no. UP 21 CN 8488 belonging to the petitioner was seized

on 24.07.2021 or the allegation collision of between the said vehicle of the petitioner and other vehicle bearing no. UP 78 CN 1425.

3. Learned Counsel submits that the petitioner is the owner of the said seized vehicle and the said vehicle should have been returned to the petitioner on interim custody. In support of his contention he has relied on the decision of the Hon'ble Apex Court in "**Sunderbhai Ambalal Desai vs. State of Gujrat**" reported in (2002) 10 SCC 283".
4. Learned Counsel on behalf of the State/Opposite Party submits that the petitioner did not produce any document in support of ownership of the seized vehicle in response to the notice under Section 91 Cr.P.C the Criminal Procedure Code (hereinafter referred to as Cr.P.C) and that is why Learned Magistrate rightly returned the decision refusing the prayer of the petitioner seeking return of seized vehicle.
5. Given the rival contention it would be appropriate to set out the provision of Section 91 of the Criminal Procedure Code as well as the decision depicted in the relevant paragraphs in **Sunderbhai Ambalal** (supra).
6. Section 91 of the Criminal proceed me Code states as under:-

"Summons to produce document or other thing.- (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any

investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed –

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

- 7.** Either issuance of notice under Section 91 Cr.P.C or non-compliance of the notice by the person summoned cannot be said to be *sine qua non* for getting returned of seized vehicle in a criminal proceeding for the offence under the Indian Penal Code. The provision of the Cr.P.C including Section 451/ 457 are expressly applicable in case of return of seized vehicle and the power under those provisions shall have to exercised by the Learned Magistrate not by Investigating Officer in exercising power under Section 91 of Cr.P.C.

8. The Supreme Court in *Sunderbhai Ambalal Desai* (supra) has laid down parameters for considering the application for interim custody expeditiously and judiciously so that the owner of the article would not suffer because of its remaining unused or by its misappropriation and court or the police would not be required to keep the vehicle in safe custody. It was observed 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 vehicle 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.”*

9. Ratio laid down by the Hon’ble Supreme Court in **Sunderbhai Ambalal** (supra)

“..... cannot be ignored as it was observed that the vehicles should not be kept in Court compound or thana compound for indefinite period till the conclusion of trial to allow the vehicles lose its value open to sky, sun and rain. The Supreme Court and this Court clearly laid down the consideration of the Court is production of the vehicle at the time of trial and also during confiscation proceeding if any confiscation proceeding is started at all and for securing that the said vehicle is not used in similar type of offence in future. If Government fiscal policy of fetching money by auction of vehicles after confiscation proceeding is considered then also it is desirable that the vehicles should be in good condition. A vehicle if kept at thana or Court compound open to sky for indefinite period would become scrap material within a year or two for want of maintenance. A scrap material cannot fetch such money which are good conditioned vehicle would fetch.”

- 10.** Pursuant to the ratio laid down by the Hon’ble Supreme Court in *Sunderbhai Ambalal (supra)* I find hardly any merit in the submission made on the behalf of the State that seized vehicle can only be returned subject to compliance of Section 91 of the Cr.P.C. Thus, I am of the view that the seized vehicle can be returned to the registered owner of the seized vehicle on furnishing of bond with surety and on condition that the petitioner will produce the seized vehicle before the Trial Court as and when called for and that he will not change the nature and character of the vehicle during pendency of the criminal case before the Trial Court.

- 11.** In the result, the order dated 07.12.2021 passed in CRR Case No. 3268 of 2021 stands set aside. The seized vehicle bearing No. UP 21 CN 8488 be returned to the petitioner on furnishing bond of Rs. 50 lacs with two registered surety of 25 lacs each subject to the condition that the petitioner shall not alienate the seized vehicle or change the nature and character of the seized vehicle during the pendency of the criminal case and that the petitioner will produce the said seized vehicle before the Trial Court as and when called for and at the time of releasing the vehicle Investigating Officer shall prepare a Panchnama and send it to the Jurisdictional Court.
- 12.** With the above observations, the criminal revision along with pending application, if any, stand disposed of.
- 13.** Copy of this judgment be communicated to the Learned Additional Chief Judicial Magistrate, Siliguri for information and necessary action.
- 14.** Urgent Photostat certified copy of this judgment, if applied for, shall be given to the parties.

(BIBHAS RANJAN DE, J.)