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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.52 of 2022

*(In the matter of an Application under Section 401 read with
Section 397 of Cr.P.C.)*

Arun Kumar Agrawal

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

Appeared in this case:-

For Petitioner

: Mr. Arjuna Charana Behera,
Advocate

For Opposite Party

: Mr. K.K. Nayak,
Additional Standing Counsel
for State

CORAM:

JUSTICE A.K. MOHAPATRA

J U D G M E N T

Date of Hearing :04.03.2022 |Date of Judgment:20.05.2022

A.K. Mohapatra, J.

1. The present criminal revision petition has been filed by the Petitioner under Section 401 read with Section 397 of Cr.P.C. challenging the order dated 15.01.2022 passed by the learned S.D.J.M., Birmaharajpur in Criminal Misc. Case (CMC) No.02 of 2022, arising out of 2(b)C.C. Case No.15 of 2021, corresponding to

O.R. No.107 of 2021-22, arising out of U.D. Case No.6 of 2021-22, thereby rejecting the petition under Section 457 of Cr.P.C. filed by the Petitioner to release the vehicle bearing Registration No.OR-26-5135 (Pick-up Van).

2. Heard learned counsel for the Petitioner and learned counsel for the State. Perused the case records.

3. It is seen from the impugned order that the application filed by the Petitioner under Section 457 Cr.P.C. for release of the seized vehicle has been rejected by the learned S.D.J.M. Birmaharajpur, on the ground that a Confiscation Proceeding, vide O.R. No.107/2021-22 is pending for adjudication before the court below. In such view of the matter, the present Revision Petition has been filed for setting aside the impugned order and for release of the vehicle in favour of the Petitioner.

4. That on perusal of record, it was found that the vehicle in question which was transporting timber illegally was seized during course of investigation. Further the vehicle in question bearing Registration No.OR-26-5135 (Pick-up Van) was registered on 09.10.2007 before the R.T.O., Nuapada in the name of the Petitioner and the Petitioner is operating the said vehicle and

maintaining the same in good condition. However, on 18.9.2021 it was alleged by the Petitioner, that he gave his vehicle to his driver which was let out on hire for transporting some articles but the driver in connivance with some antisocial persons loaded logs of teak wood unauthorizedly from the Ulunda Forest Range. Thereafter, the vehicle was seized by the Forest Officials along with the logs of teak wood which were being transported illegally. Further case of the Petitioner is that the driver of the vehicle without the knowledge and consent of the owner and in collusion with the antisocial persons transporting logs of teak from Ulunda Forest Range illegally and accordingly the vehicle was seized by the Forest Officials and a case was registered against the Petitioner under Section 56 of Orissa Forest Act, 1972 and Sections 4 and 12 of Orissa Timber and Other Forest Produce Transit Rules, 1980.

5. Learned counsel for the Petitioner submits that the vehicle which was seized on 18.09.2021 is lying exposed to the Sun and Rain in the Ulunda Range Office in the district of Subarnapur. The driver of the vehicle has been arrested and forwarded to the judicial custody. It is further submitted by learned counsel for the Petitioner that the condition of the vehicle is deteriorating day by day as the

same has remained stationary in the premises of Ulunda Range Office, Subarnapur and further the same remains exposed to the Sun and Rain causing gross devaluation of the vehicle in question. He further contends that the vehicle stands recorded in the name of the Petitioner and it has a valid insurance and that the vehicle is not required for the investigation purpose. Further, learned counsel for the Petitioner submits that the Petitioner is ready and willing to produce the vehicle in the confiscation proceeding as and when the same will be required by the Authorities.

6. A report was called for from the Range Officer, Ulunda, Subarnapur by the learned court below and the Range Officer, Ulunda submitted a report to the court below stating that the vehicle is not required for further investigation. On an application filed under Section 457 Cr.P.C. for release of the vehicle, the Petitioner was asked by the court below to produce all original documents relating to vehicle and the same was produced to the satisfaction of the court below on 15.01.2022. Further after hearing the counsels on the application under Section 457 Cr.P.C., learned court below rejected the said application without taking into consideration the fact that the vehicle is lying in the open place inside the Ulunda

Range Office Campus, Subarnapur being exposed to the Sun and Rain. On a close scrutiny of the impugned order dated 15.01.2022, it appears that the learned court below has rejected the application of the Petitioner mechanically.

7. The matter of vehicles lying on the road and in police stations on being seized by the police in connection with various offences under different laws engaged the attention of a Division Bench of this Court in the matter of *Ashis Ranjan Mohanty (Adv.) vs. State of Odisha and others* in *(W.P.(C) No.31622 of 2021)* decided on **31.01.2022**. After hearing the learned counsel for the respective parties in the said matter, this Court came to learn that a large number of seized vehicles are dumped in police station and as such are causing encroachment on public road adjoining the police station and further due to lack of proper care and maintenance and by remaining exposed to Sun and Rain are being reduced to a piece of junk very quickly thereby losing its market value. After a thorough discussion on the issue, the Division Bench of this Court has laid down a guideline to deal with such vehicles. Paragraph-16 of the said judgment deals with all vehicles is quoted herein below:

“Vehicles

16. As regards the vehicles, the following directions are issued:

(I) Vehicles involved in an offence may be released either to the rightful owner or any person authorised by the rightful owner after

(a) preparing a detailed panchnama;

(b) taking digital photographs and a video clip of not more than 1 minute duration of the vehicle from all angles;

(c) encrypting both the digital photograph and the video clip with a hashtag with date and time stamp with the hash value being noted in the order passed by the concerned court;

(d) preserving the encrypted digital photograph and video clip on a pen drive to be kept in a secure cover in the file and preferably also uploading it simultaneously on a server kept either in the concerned Court premises or in the server of the jurisdictional District Court

(e) preparing a valuation report of the vehicle by an approved valuer;

(f) obtaining a security bond.

(II) The concerned court will record the statements of the complainant, the accused as well as the person to whom the custody of the vehicle is handed over affirming that the above steps have taken place in their presence.

(III) Subject to compliance with (I) and (II) above, no party shall insist on the production of the vehicle at any subsequent stages of the case. The panchnama, the encrypted digital photograph and video clip along with the valuation report should suffice for the purposes of evidence.

(IV) The Courts should invariably pass orders for return of vehicles and/or accord permission for sale thereof and if in a rare instance such request is refused, then reasons thereof to be recorded in writing should be the general norm rather than the exception.

(V) In the event of the vehicle in question being insured, the concerned Court shall issue notice to the owner and the insurance company prior to disposal of the vehicle. If there is no response or the owner declines to take the vehicle or informs that he has claimed insurance/released his right in the vehicle to the insurance company and the insurance company fails to take possession of the vehicle, the vehicle may be ordered to be sold in public auction.

(VI) If a vehicle is not claimed by the accused, owner, or the insurance company or by a third person, it may be ordered to be sold by public auction.”

8. Further in the judgment delivered by this Court in *Ashis Ranjan Mohanty's case (supra)*, this Court under the heading ‘General Directions in Paragraph-17(v) has also provided a safeguard, which is quoted herein below:

“17(v) If a person to whom the interim custody of the property/vehicle is granted is ultimately found not entitled to it, and is unable to return it, its value shall be recovered by enforcing the bonds and the security taken from such person or recovering the monetary value from him as arrears of land revenue.”

9. So far the confiscation proceeding is concerned, this Court is of the considered opinion that usually the same takes some time. Further, if the vehicle in question is not released for interim period

with terms and conditions for production of the vehicle at the time of confiscation, there is every possibility that the condition of the vehicle would grossly deteriorate and the same would not be sold at the best possible price. Hence, keeping in view the fact that vehicles are in stationary conditions either at the Police Station or at the Forest Range Office, this court is of the view that the same would not be beneficial to both the owner of the vehicle as well as for the revenue. On the contrary, if the vehicle is released interimly in favour of the true owner thereof on certain terms and conditions, then the vehicle would not only be maintained properly but the vehicle would not lose its value drastically.

10. Further, in the event of such interim release of the vehicle, the value of the vehicle can be secured by insisting on collateral security and further by ensuring that the vehicle is maintained by the owner in a good condition and is produced before the Authority/Court at the time of confiscation, the interim release of the vehicle subject to the condition that the same shall be maintained in a good condition and shall be produced before the Authority in the confiscation proceeding which would be in the best interest of justice and the same would also be in furtherance of the

aim and objective of the judgment of this Court in *Ashis Ranjan Mohanty's case (supra)*.

10. It is also relevant to mention here that if the vehicle is kept stationary or stranded at a particular place under the supervision and custody of the government officials/police officers, in such eventuality, the government would be required to spend a huge sum of money for the safety of the vehicles as well as for maintenance of the vehicle till the confiscation proceeding comes to an end. Keeping in view the aforesaid practical problems the law makers have incorporated the provision like Sections 451 and 452 of Cr.P.C. Section 451 of Cr.P.C. confers wide powers on the trial court to pass necessary orders for custody and disposal of the property pending trial. A close scrutiny of the provision contained under Section 451 of Cr.P.C. would clearly reveal that the trial court is vested with wide powers to deal with the seized property as it thinks fit for the proper custody of such property pending conclusion of the enquiry or trial, and, if the property is subject to safety and natural decay, or if it is expedient so to do, the court may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

11. Furthermore, a bare reading of Section 457 of Cr.P.C. gives a clear impression that in a criminal enquiry/trial, the Magistrate have been vested with wide powers to pass such orders as they may think fit for disposal of such property or for delivery of such property to the persons entitled to the possession thereof lawfully with a condition for production of such property as and when the same will be required by the court.

12. Sub-section 2 of Section 457 of Cr.P.C. provides that the Magistrate may order the property to be delivered to a person lawfully entitled on such condition as the Magistrate may think fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation. Therefore, there exists no bar in law for interim release of the vehicle in favour of a known owner of the vehicle.

13. It is also well known that so far a running vehicle is concerned, every day matters as the vehicle requires some kind of maintenance daily. Therefore, a few days or may be weeks

detention can also cause damage/decay/deterioration in the condition of the vehicle and thereby the vehicle would lose its market value. At the interim stage, the court should be concerned about the condition of the vehicle and possibly take all steps so that the value of the property does not deteriorate due to delay in disposal of cases. It is because, if the value of the vehicles get decreased, the same would not be beneficial either to the owner of the vehicle or to the government. In other words keeping the vehicles stranded and allowing the condition of the vehicle to deteriorate and sometimes valuable parts of the vehicle are stolen due to lack of adequate safety arrangements would be colossal waste for the entire nation cumulatively.

14. Under the aforesaid circumstances, the courts have to strike a balance between the two extreme factors and accordingly consider the application of Section 457 Cr.P.C. by taking into consideration certain major factors like :-

- i) Whether the vehicle is required for the purpose of investigation/trial?
- ii) When and how soon it is required for the aforesaid purpose?
- iii) How long the vehicle is likely to be kept in stationary or in strand condition?

- iv) Whether the vehicle can be kept at a safe and secure place?
- v) Whether there is adequate provision to ensure that the vehicle does not get exposed to the adverse effects of the Sun and Rain?
- vi) Whether there is any possibility of theft of parts of the vehicle?
- vii) What would be the additional expenses that is likely to be incurred for the safety and maintenance of the vehicle?

All these are the questions that is required to be taken into consideration while considering the application under Section 457 Cr.P.C. Considering the volume of vehicles that are seized and kept in police stations or in other government offices or in public roads, it is difficult on the part of the court or the government offices to provide safety and security and also to ensure proper care and maintenance.

15. Considering all the aforesaid aspects and taking into consideration the huge problem that is faced by the courts and every police station and Forest Offices in the entire State, this Court is of the considered view that two courses are left open to the court/authority for dealing with the vehicles in connection with the alleged offence:

- i) Either the vehicle has to be immediately sold by putting the same to public auction; or
- ii) Hand over the seized vehicle to the ostensible owner or in custody of a person who in turn shall produce the same as and when the vehicle would be required by the court/authority.

Further there are certain Special Acts which provides for immediate confiscation and sale of the vehicle. However, there are also other Acts, which provides that the confiscation proceeding can only be initiated after conclusion of the trial.

16. The aforesaid legal anomaly can be best taken care of by taking resort to the provision contained in Section 457 of Cr.P.C. which permits the interim release of the vehicle. Such interim release could be for shorter duration and with certain terms and conditions whereby the owner has to furnish a bond, provide collateral security, provide an undertaking to produce the vehicle as and when it is required, shall not change, alter the vehicle and shall not create any third party interest etc. etc. Further, if the interim release is allowed in favour of a person who is the ostensible owner of the vehicle as has been held by this Court in the case of *Ashis Ranjan Mohanty's case (supra)* the deterioration of the condition of the vehicle and the loss of commercial value of the vehicle would be **seized to** a large extent and thereby a huge national waste could

be prevented by resorting to such procedure. It is needless to mention here that the courts/authorities are not devoid of power to impose any suitable terms and conditions while releasing the vehicles for an interim period. Further, the apprehension of the learned counsel for the State that the Petitioner might sell the vehicle once the same is released and he may not produce the vehicle as and when the same is required by the court/ authority can also be very well taken care of by sending intimation to the RTO/RTA not to transfer the vehicle till the trial/proceeding is concluded. Further upon issuance of a NOC, the Registering Authority may change the ownership. Such an arrangement would definitely take care of the apprehension of the State Counsel in the present context.

17. In view of the discussion made hereinabove, this Court deems it proper to allow the criminal revision petition by setting aside the order dated 15.01.2022, passed by the learned S.D.J.M., Birmaharajpur, in Criminal Misc. Case(CMC) No.02 of 2022, arising out of 2(b)C.C. Case No.15 of 2021, corresponding to O.R. No.107 of 2021-22, arising out of U.D. Case No.6 of 2021-22. Further, this Court thinks it proper and in the larger interest of

justice, the vehicle in question bearing Registration No.OR-26-5135 (Pick-up Van) should be released interimly in favour of the recorded owner subject to the following terms and conditions as laid down by the Division Bench of this Court in the case of ***Ashis Ranjan Mohanty (supra)*** paragraph 16 (I) (a) to (f) which has been quoted here in below:

(I) Vehicles involved in an offence may be released either to the rightful owner or any person authorised by the rightful owner after ;

(a) preparing a detailed panchnama;

(b) taking digital photographs and a video clip of not more than 1 minute duration of the vehicle from all angles;

(c) encrypting both the digital photograph and the video clip with a hashtag with date and time stamp with the hash value being noted in the order passed by the concerned court;

(d) preserving the encrypted digital photograph and video clip on a pen drive to be kept in a secure cover in the file and preferably also uploading it simultaneously on a server kept either in the concerned Court premises or in the server of the jurisdictional District Court

(e) preparing a valuation report of the vehicle by an approved valuer;

(f) obtaining a security bond.

18. The interim release of the vehicle shall also be subject to further condition as follows:

- (i) The petitioner shall not transfer or dispose of or create any third party interest in any manner whatsoever in respect of the offending vehicle to anyone else and shall not make any change in its body, colour or Engine;
- (ii) It is needless to say that make, colour, chassis number and Engine number of the offending motorcycle shall be furnished by the petitioner before the Trial Court with an undertaking that no damage shall be caused or no part of the motorcycle be substituted and subject to reasonable wear and tear the vehicle shall be kept in a good condition;
- (iii) He shall keep the vehicle insured at all times and produce the Insurance Certificate before the Trial Court as and when called upon;
- (iv) The Petitioner or his agent authorized person shall produce the vehicle before the concerned court as and

when the same would be required in a confiscation proceeding by the court;

- (v) An intimation shall be given to the RTO/RTA under whose jurisdiction the vehicle has been registered not to allow transfer of ownership/creation of any charge hypothecation etc/grant NOC etc. in respect of the offending vehicle without the permission of the court in seisin over the matter;

- (vi) The petitioner shall also file an undertaking before the Trial Court that the offending vehicle shall not be used for commission of any offence of similar nature.

19. The Criminal Revision Petition is accordingly allowed.
There shall be no order as to cost.

(A.K. Mohapatra)
Judge