

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.437 of 2022

AFR

Ganapati Sahu

....

Petitioner

Mr. Prasanna Kumar Mishra, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.S. Mohapatra, ASC

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:12.10.2022

1. Instant petition under Section 482 Cr.P.C. is at the behest of the petitioner challenging the impugned orders under Annexures-1 and 2 whereby the vehicle in question owned by him was not released in his favour having been involved in an accident with registration of G.R. Case No.101 of 2021 pending in the file of learned S.D.J.M., Gunupur, Rayagada.

2. The petitioner moved an application under Section 457 Cr.P.C. in respect of the seized vehicle (No.OD-10-F-8237) involved in the aforesaid case registered under Sections 279 and 304A IPC which was rejected by the learned S.D.J.M., Gunupur by order dated 9th September, 2021 under Annexue-1 on the ground that the vehicle was having no valid insurance against 3rd party risks citing Rule 6 of the Odisha Motor Vehicles (Accident Claims Tribunal) Rules, 2018 (hereinafter referred to as 'the Rules'). Being aggrieved, the petitioner then approached the court of Additional Sessions Judge, Gunupur in Criminal Revision No.04 of 2021 which was disposed of by order dated 9th December, 2021 vide Annexure-2 confirming the order of rejection. While dismissing the revision, the learned

Sessions Court concluded that the alleged vehicle since was not insured as on the date of accident, it cannot be released in view of Rule 6 (supra) and decision of this Court in **Ramakrushna Mahasuar Vrs. State of Odisha** reported (2021) 81 OCR 635. So to say, the learned courts below declined to release the seized vehicle in favour of the petitioner on the aforesaid ground.

3. Mr. Mishra, learned counsel for the petitioner submits that the seized vehicle should have been handed over to the custody of the petitioner in terms of Rule 6 of the Rules accepting security from him. According to Mr. Mishra, in so far as Rule 6 is concerned, it only demands security in absence of insurance coverage. An order dated 13th December, 2021 in CRLMC No.2040 and two other cases (**Nabaratna @ Nabaratan Agrawal Vrs. State of Odisha** etc.) is cited by Mr. Mishra by contending that the learned courts below could have asked for security in terms of Rule 6. Mr. Mohapatra, learned ASC, on the other hand, submitted that since the vehicle was not validly insured, the courts below rightly rejected prayer for its release in favour of the petitioner and therefore, the impugned orders under Annexures-1 and 2 cannot be faulted with and disturbed.

4. Admittedly, the learned courts below did not demand any security from the petitioner and simply rejected release of the vehicle in view of Rule 6 of the Rules and by referring to the decision in **Ramakrushna Mahasuar** (supra). Whether the courts below rightly refused release of the seized vehicle? Whether there has been due compliance of Rule 6 of the Rules while rejecting the claim of the petitioner for taking custody of the seized vehicle moved as per Section 457 Cr.P.C?

5. The contention of the petitioner that the payment for renewal of insurance was made on 4th April, 2021 and hence, the coverage

should be with effect from 5th April, 2021 cannot be entertained as it was never disputed before. That apart, such a question cannot also be a subject matter of adjudication in the present proceeding. When there was no insurance coverage when the vehicle met with an accident, whether the petitioner was entitled to its release and on what condition. Mr. Mishra, learned counsel for the petitioner submits that in view of the decision in **Nabaratna @ Nabaratan Agrawal** (supra), the petitioner could be directed to furnish security in terms of Rule 6 or to the extent of the present market value of the seized vehicle as per the aforesaid decision.

6. At this juncture, it is apposite to refer Rule 6 of the Rules which is reproduced herein below:

“6. Prohibition against release of motor vehicle involved in accident:(1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating officer unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule(1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating officer and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.”

7. According to Rule 6(1), no court shall release a motor vehicle involved in an accident when it is not covered by the policy of insurance against 3rd party risks taken in the name of registered owner, who also fails to furnish a copy thereof despite a demand for the same during investigation unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded by a Tribunal in a claim case arising out of such accident. The second part of the Rule suggests that sufficient security should be the need and demand, the purpose being to ensure payment of compensation which may at last be awarded by the Tribunal. As per Sub-rule (2) of Rule 6, in case of the vehicle having no insurance cover and the registered owner fails to furnish copy of such policy as per Sub-rule (1) thereof, the vehicle shall be disposed of in public auction and the sale proceeds shall be deposited with the Claims Tribunal having jurisdiction over the area in question. The above procedure is to be followed with regard to release or disposal of a motor vehicle involved in an accident resulting in death or bodily injury or damage to property in absence of insurance coverage or when the registered owner fails to furnish a copy of policy on a demand during investigation. If Rule 6 of the Rules is read and understood properly, it puts a rider in place while releasing a motor vehicle which is not insured provided the registered owner submits sufficient security to the satisfaction of the court to pay compensation that may finally be awarded by the Claims Tribunal.

8. This Court in **Nabaratna @ Nabaratan Agrawal** (supra) referred to the decisions of the Apex Court, such as, **Jai Prakash Vrs. M/s. National Insurance Company and others**: JT 2009 (15) SC 443 and **Ushadevi and Anr. Vrs. Pawan Kumar and others** decided in Civil Appeal No.9936-9937 of 2016 and disposed of on 13th September, 2018. In **Nabaratna @ Nabaratan Agrawal**, the owners were

directed to furnish security adequate to cover the compensation and if the court is unable to quantify, it may call upon them to submit security at least to the extent of the market value of the vehicles by concluding that the aforesaid aspect was not raised and dealt with in **Ramakrushna Mahasuar** case.

9. In so far as the impugned orders under Annexures-1 and 2 are concerned, the Court does not find that the learned courts below ever demanded any such security from the petitioner who claims to be the registered owner of the vehicle sufficient to pay the compensation which may be awarded by the Claims Tribunal later on. Rather it is made to appear that the courts below rejected release of the vehicle on the premise that it had no valid insurance by the time of the accident. But considering Rule 6 of the Rules, despite having no policy of insurance, a vehicle may be released in favour of the registered owner, if he submits sufficient security to the satisfaction of the court to pay the compensation which may be awarded in a claims case arising out of the accident. Having not demanded any security from the petitioner, in the opinion of the Court, the learned courts below were not justified by simply rejecting release of the vehicle in his favour when such a provision is envisaged in Rule 6 of the Rules.

10. In the case of **Nabaratna @ Nabaratan Agrawal**, this Court has taken judicial notice of the earlier decision in **Ramakrushna Mahasuar** and held that the correctness of the order challenged therein was confined to the ground of absence of insurance policy whereas the owners of the vehicle in that case were willing to abide the provisions of Rule 6 of the Rules by furnishing security. In fact, in the case of **Nabaratna @ Nabaratan Agrawal**, a decision of Delhi High Court in FAO No.842 of 2003 (**Rajesh Tyagi and others Vrs. Jaibir Singh and others**) and disposed of on 8th June, 2009 was cited and held that a similar course of action may be adopted

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directing the owner of the vehicle to furnish sufficient security to the satisfaction of the court to pay the compensation or at least equal to the value of the vehicle if the court is unable to quantify the same. In the aforesaid case, the ratio of the Supreme Court's judgment in **Sunderbhai Ambalal Desai Vrs. State of Gujarat** reported in (2002) 10 SCC 283 was taken note of and finally held that the vehicle should be released after complying requirements of Rule 6 and if the court is not able to quantify the security may direct the owners at least to furnish security to the extent of the present market value of the vehicles while releasing it in their favour imposing such other conditions as found to be necessary and expedient.

11. In the present case, the Court is of the view that the petitioner should have been directed to furnish security as per Rule 6 of the Rules which the learned courts below did not do and accomplish, rather, straightaway declined to release the vehicle in his favour on the ground that it was not validly insured as on the date of the accident. Thus, the Court is of the ultimate conclusion that the learned S.D.J.M., Gunupur so also the revisional court should have examined the matter in its proper perspective and ought to have passed appropriate orders accordingly and therefore, the impugned orders under Annexures-1 and 2 cannot be sustained in law.

12. Accordingly, it is ordered.

13. In the result, the petition under Section 482 Cr.P.C. stands allowed. As a necessary corollary, the impugned orders under Annexures-1 and 2 are hereby quashed. Consequently, the learned S.D.J.M., Gunupur is hereby directed to consider release of the vehicle bearing registration No.OD-10F-8237 in the light of Rule 6 of the Rules and in view of the decision of **Nabaratna @ Nabaratan Agrawal** accepting security sufficient to pay the

compensation and if it is unable to quantify the same, to accept such security at least to the extent of its present market value subject to other conditions imposed as it may deem fit and proper in the facts and circumstances of the case and to complete the entire exercise preferably within a fortnight from the date of receipt of a copy of the above order after providing due opportunity of hearing to both the sides.

(R.K. Pattanaik)
Judge

TUDU

