

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLMC No.1908 of 2022

Samir Rajan Parida

....
Petitioner
Mr. P.K. Deo, Advocate

-Versus-

State of Odisha

....
Opposite Party
Mr. S.S. Mohapatra,
Additional Standing Counsel

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:18.10.2022

1. The petitioner by filing the instant petition has questioned the correctness and judicial propriety of impugned order dated 17th June, 2022 under Annexure-2 passed in Criminal Revision No.10 of 2022 by the learned Sessions Judge, Keonjhar for having confirmed the order dated 8th March, 2022 passed in CMC No.412 of 2021 by the learned S.D.J.M., Keonjhar, who rejected an application under Section 457 Cr.P.C. vis-à-vis release of a vehicle seized in connection with Keonjhar Sadar P.S. Case No.449 dated 29th October, 2021 corresponding to G.R. Case No.1777 of 2021 registered under Sections 379, 420 read with 34 IPC and Section 7 of the Essential Commodities Act,1955 (herein after referred to as 'the E.C.Act') on the ground that the same is not tenable in law.

2. The vehicle in question bearing registration No.OR05AR6633 was seized on 28th October, 2021 and the fact of seizure was intimated to the learned S.D.J.M., Keonjhar thereafter and in that connection, the petitioner moved the said court for its release and

interim custody. But the same was denied by order dated 8th March, 2022. The order of the learned S.D.J.M., Keonjhar in CMC No.412 of 2021 was challenged before the Sessions Court, however, it ended with the same result. In other words, the revisional court also declined to direct interim release of the seized vehicle in favour of the petitioner, who claimed himself as its owner. Being unsuccessful, the petitioner has approached this Court assailing the impugned order under Annexure-2 and for a consequential direction for the release and custody of the vehicle on any such terms and conditions as deemed just and proper in the facts and circumstances of the case.

3. Mr. Deo, learned counsel for the petitioner submits that the petitioner does not have any criminal antecedent nor at any point of time the alleged vehicle was ever involved in any such illegal activity. It is further submitted that the petitioner was not present at the spot or was having any knowledge about the transportation of oil in the seized vehicle and since he is not involved in the incident, the learned court below should have directed interim release of the vehicle subject to conditions. Mr. Mohapatra, learned ASC on the other hand submits that the learned courts below did not commit any error and rightly rejected the request of the petitioner since the vehicle could not have been released in his favour in view of Section 6-E of the E.C. Act and therefore, the impugned order under Annexure-2 passed by the Sessions Court upholding the rejection of the learned S.D.J.M., Keonjhar does not suffer from any legal infirmity.

4. The learned Sessions Court refused to release the seized vehicle on the ground that the confiscation proceeding is pending before the Collector and as per Section 6-E of the Essential Commodities Act, release of vehicle used in the conveyance of essential commodities shall be by the Collector. In fact, the learned court

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below concluded that it does not have jurisdiction to pass order with regard to disposal of the seized vehicle in view of the bar contained in Section 6-E of the E.C. Act. So to speak, the vehicle was not allowed to be released in favour of the petitioner on the ground that the confiscation proceeding is pending before the Collector, Keonjhar, who is authorized to deal with the matter.

5. Section 6-E of the Essential Commodities Act, 1955 is reproduced herein below:

“6E. Bar of jurisdiction in certain cases.-Whenever any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6A, the Collector, or as the case may be, the judicial authority appointed under section 6C shall have and notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, tribunal or authority shall not have jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.”

6. According to the above provision, the seized commodities and all other articles including a vehicle used for the purpose of its transportation or conveyance is subject to confiscation and if the proceeding in that respect under Section 6-A of the E.C. Act is pending before the Collector or the competent authority, no court or other authority shall have the jurisdiction to pass orders regarding disposal, delivery etc. of the said articles. There is a non-obstante clause in Section 6-E of the E.C. Act which overrides the jurisdiction of a Court to deal with release, dispose of, delivery or distribution of essential commodities and other items

including vehicles which vests on the Collector before whom the confiscation proceeding is pending. In other words, jurisdiction under Section 457 Cr.P.C. may be exercised by a criminal court during investigation but such power ceases to exist the moment the confiscation proceeding commenced and in that case, the aggrieved person shall have to approach the Collector or the competent Authority for disposal of the seized articles.

7. The revisional court took cognizance of the decision of this Court in **Ashish Ranjan Mohanty Vrs. State of Odisha and others** disposed of on 31st January, 2022 in W.P.(C) No.31622 of 2021 and concluded that in case of rejection to return the vehicle as directed in the aforesaid decision reasons thereof to be recorded in the writing and in the instant case, the reason being the bar envisaged in Section 6-E of the E.C. Act. Mr. Deo, leaned counsel for the petitioner cited a decision of this Court in the case of **Nabakishore Sahoo Vrs. State of Orissa** reported in 2004 (II) OLR 556 and contended that the seized vehicle since lying idle within the premises of the P.S. and exposed to extreme climatic conditions should have been released in favour of the petitioner while exercising the jurisdiction under Section 457 Cr.P.C. The aforesaid decision is with reference to the offence under the Bihar and Excise Act and in that case, even though the vehicle was liable to be confiscation in view of Section 66 of the said Act, considering the fact that the offences may be compounded in terms of Section 68 thereof which also deals with the power to release the seized properties before any order is passed by the Magistrate under Section 67 and referring to the judgment of the Apex Court in **Sunderbhai Ambala Desai Vrs. State of Gujarat** reported in (2003) 24 OCR (SC) 444 directed its release in favour of the registered owner. The decisions (supra) cannot be applied and not an authority on the point involved in the present case.

8. The Apex Court in **State of West Bengal and others Vrs. Sujit Kumar Rana** reported in AIR 2004 SC 1851 while dealing with a case under the Indian Forest Act with reference to Section 59G of the said Act which relates to bar of jurisdiction to deal with matters of custody etc. held and observed that the criminal court although undisputedly has the jurisdiction to deal with the property which is the subject matter of offence as per the provisions of the Cr.P.C., but once a confiscation proceeding is initiated, the said power cannot be exercised by a Magistrate and resultantly, the High Court cannot exercise its jurisdiction under Section 482 Cr.P.C. It is further held therein that the statutory provisions of the said Act provide the powers for interim custody of the vehicle with the competent authority and not the Magistrate. Even the Apex Court referring to one of its earlier decisions in the case of **State of Karnataka Vrs. K.Krishnan** reported in JT (2000) 9 SC 356 reiterated the view regarding the jurisdiction of a Magistrate finally with a conclusion that the High Court also cannot exercise jurisdiction under Section 482 Cr.P.C. for interim release of the vehicle once a confiscation proceeding is initiated which in any case bars the jurisdiction of a criminal court in terms of Section 59G of the Act. Even a decision under the E.C. Act was quoted with approval which in the case of **Sambhu Dayal Agarwala Vrs. State of West Bengal and another:(1990) 3 SCC 549** and also **Deputy Commissioner, Dakshina Kannada District Vrs. Rudolph Fernandez: (2000) 3 SCC 306** and held and observed that the High Court would be exceeding in its jurisdiction under Section 482 Cr.P.C. when there is a bar contained in Section 6-E of the Act which is intended to serve a dual purpose such as to prevent interference by courts to effectuate the sale of essential commodities under Sub-Section (2) and the return vehicles etc. under the second proviso to sub-section(1) of Section 6-A of the Act and in that sense, Section 6-E is complementary in nature. The

Court thus reaches at a conclusion that a seized vehicle may be released by a Magistrate, if there is no confiscation proceeding initiated but once it is set into motion before the competent authority, the bar under Section 6-E of the E.C. Act comes into force. The decisions in **Ashish Ranjan Mohanty**, **Nabakishore Sahoo** and **Sunderbhai Ambala** (supra) are of general application and cannot be accepted as a ratio for exercising inherent jurisdiction under Section 482 Cr.P.C. despite a bar contained in the Special Act.

9. Accordingly, it is ordered.

10. In the result, the petition stands dismissed.



(R.K. Pattanaik)
Judge

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