

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.214 of 2020

Arising Out of PS. Case No.-56 Year-2017 Thana- AUANGARI District- Nalanda

JITENDRA KUMAR S/o Parduman Pandit Resident of Village-Teus Near Kali Mandir, Barbiga, P.S.-Barbiga, District-Sheikhpura. At present resident of Nalanda, P.S.-Nalanda, District-Nalanda, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Excise Department Govt. of Bihar, Patna.
3. The District Magistrate, Nalanda, District-Nalanda.
4. The Superintendent of Police, Nalanda, District-Nalanda.
5. The Officer-in-charge Police Station Aungori Bigha, Hilsa District-Nalanda.
6. The Excise Officer P.S. Aungari Bigha, Hilsa District-Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pankaj Kumar
For the Respondent/s : Mr.Vikash Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 3 13-07-2023 1. The present writ application has been filed for quashing the order dated 03.12.2019 passed in GR Case No. 1508 of 2017 arising out of Aungori Bigha PS Case No. 56 / 2017 passed by learned J.M. 1st Class, Hilsa (Nalanda) whereby the learned Magistrate has been pleased to reject the application filed by petitioner for release of his truck bearing Registration No. BR-21K2089, Engine No. 497TC92GVY824151, Chasis No. MAT457184E7G11812 which was seized in connection with Aungori Bigha PS Case No. 56 / 2017 registered for the offences under Section 379,



411, 34 of the IPC. The further prayer of the petitioner is for issuance of direction for release of the seized vehicle / truck of the petitioner which is kept in open at Aungori Bigha Police Station.

2. The brief facts giving rise to the present writ application is that a FIR was lodged by Saroj Narayan Prasad Singh alleging therein that he is a Contractor of Village Water Supply Scheme controlled by Public Health Abhiyantran Division, Hilsa and was engaged in the work of laying down of D.I. Pipes which were being transported on the truck in question and the pipes along with the truck was stolen by unknown thieves in connivance with the vehicle owner and the driver.

3. Learned counsel for the petitioner submits that he is the owner of the seized truck having Registration No. BR-21K-2089. On 04/12/2017 the petitioner filed an application for release of the truck before the learned Magistrate and after hearing the parties the learned Magistrate vide the impugned order dated 03-12-2019 has rejected the prayer for release of truck in favour of the petitioner on the ground that the petitioner was not on bail at the time of consideration of his application for release. He further submits that the truck has been kept in open



place since 2017 and the same is likely to be damaged due to weather and other external forces.

4. Learned counsel for the State opposing the prayer of the petitioner submits that petitioner is an accused in connection with Aungori Bigha PS Case No. 56 / 2017 and accordingly the learned Magistrate on the ground that the petitioner was in jail at the time of seeking release of the vehicle, rejected the prayer for release of the truck. He however submits that now the petitioner has been released on bail.

5. In reply, learned counsel for the petitioner submits that it is not the correct fact inasmuch as at the time of consideration of release application filed by the petitioner, the petitioner was already on bail however the co-accused (driver) was in custody.

6. I have heard learned counsel for the parties.

7. Section 451 & 457 of the Cr.P.C. deals with the power of the court to order for custody and disposal of the property pending trial in certain cases and the procedure by police upon seizure of property.

8. From perusal of the aforesaid provisions it would appear that the court is empowered to pass an appropriate order with regard to such property. The object and scheme of the



various provisions of the Cr.P.C. dealing with seizure of property by the police has been dealt with by the Apex Court in the case of *Sunderbhai Ambalal Desari v. State of Gujarat* reported in (2002)10 SCC 283 in paragraphs- 5 and 7 wherein it has been observed as follows:-

“5. Section 451 clearly empower 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

7. In our view, the powers under Section 451 CrPC 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 article 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. In paragraphs- 17 and 21 of the said judgment the Hon'ble Apex Court has observed as follows:-

"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.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.PC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper



supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

10. The Hon'ble Apex Court in another judgment reported in 1977(4) SCC 358 Smt. Basavva Kom Dyamangouda Patil v. State of Mysore & Anr. while dealing with the seizure of property by the police and the object and scheme of the various provisions of the Cr.P.C. has observed in paragraph- 4 as follows:-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it: ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary, As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other



compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

11. Yet in another judgment reported in (2010) 6 SCC 768 General Insurance Council and Ors v. State of Andhra Pradesh and Ors the Hon'ble Supreme Court has directed to ensure implementation of statutory provision as contained in Sections 451 and 457 of the CrPC so as to avoid natural decay on account of weather conditions of seized vehicle in Police Station and in paragraphs – 11 and 14 has directed as follows:-



“11. Notice of the said petition was issued to all the States and Union Territories. Almost all the States have contended that they have already issued necessary guidelines and directions for full and complete compliance of the provisions contained in Sections 451 and 457 of the Code as elaborated in *Sunderbhai Ambalal Desai (supra)* as also under Section 158(6) of the M.V. Act and 159 of the Rules as directed in *General Insurance Council case (supra)*. Thus, in one voice, they have contended that there would not be any difficulty in compliance of the directions that may be issued in furtherance of achieving the object as directed by this Court. Thus, in our view, there appears to be consensus in this matter.

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being



driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments / Union Territories / Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division / Commissioner of Police of the concerned cities / Superintendent of Police of the concerned district."

12. In view of the aforesaid discussion of law and the fact involved in the matter, I am of the considered opinion that learned Magistrate has failed to exercise its jurisdiction in correct legal perspective and thereby committed material irregularity inasmuch as if the vehicle in question is allowed to be kept in open in the police station, it may lose its road worthiness due to natural decay on account of weather condition. It is not disputed that the petitioner is the owner of the vehicle as would be evident from the report submitted by the police in this regard and the same is lying in open place in the police station since 2017.

13. Accordingly, the order dated 03.12.2019 passed by



J.M. 1st Class Hilsa (Nalanda) in G.R. Case No. 1508 / 2017 arising out of Aungori Bigha PS Case No. 56 / 2017 is set aside and the learned J.M. 1st Class, Hilsa (Nalanda) is directed to release the vehicle in question in favour of the petitioner after verifying the ownership / registration of the vehicle within a period of three weeks from the date of receipt / production of a copy of this order subject to the following conditions:-

(i) That the petitioner shall furnish adequate security of Rs. 1 lakh to the satisfaction of the court.

(ii) That before handing over the vehicle to the petitioner, a detailed and proper *punchnama* of the said vehicle after taking its photograph shall be prepared.

(iii) That the petitioner shall also execute bond that the vehicle in question shall be produced as and when required at the time of trial.

(iv) That the petitioner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the vehicle till pendency of the trial.



14. With the aforesaid observation and direction, the
instant writ application stands allowed.

(Anil Kumar Sinha, J)

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