

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.488 of 2021

Arising Out of PS. Case No.-296 Year-2019 Thana- ARA NAGAR District- Bhojpur

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1. ARBIND KUMAR @ ARVIND KUMAR SON OF OM PRAKASH MAHTO @ OM PRAKASH SINGH RESIDENT OF VILLAGE-SARAIYA, P.S.- KRISHNAGARH, DISTRICT-BHOJPUR
 2. RAM CHANDRA SINGH SON OF LATE KASTURI MAHTO RESIDENT OF VILLAGE- SARAIYA, P.S.- KRISHNAGARH, DISTRICT-BHOJPUR

... .. Petitioner/s

Versus

1. The State of Bihar
2. THE DISTRICT MAGISTRATE, BHOJPUR BIHAR
3. THE SUPERINTENDENT OF POLICE, BHOJUR BIHAR
4. THE OFFICER-IN-CHARGE OF ARA TOWN P.S. DISTRICT-BHOJPUR BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Prabhat Kumar Singh
For the Respondent/s : Mr. Md. Irshad, AC to SC 1

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

7 17-08-2023 The present writ application has been filed against the order, dated 04.12.2020, passed, by the learned Sessions Judge, Bhojpur, at Ara, in N.D.P.S. Case No. 10 of 2019, arising out of Ara Town Police Station Case No. 296 of 2019, dated 24.06.2019, registered for the offence punishable under Sections 21 (a) of the Narcotic Drugs and Psychotropic Substances Act, 1985, whereby the learned Sessions Judge has rejected the prayer of the petitioners for releasing Royal Enfield motorcycle, bearing registration no. BR04Q/1982 and Rs. 21,200/- in favour of petitioner no. 1 and Rs. 1,51,980/- in favour of petitioner no.



2 pending trial or confiscation proceeding.

2. The brief facts, giving rise to the present writ application, is that on the basis of written report submitted by Ram Lakhan Prasad, Sub-Inspector of Police, to the Station House Officer of Ara Town Police Station, Ara Town Police Station Case No. 296 of 2019 was registered, stating therein that on 24.06.2019, the informant intercepted one bullet motorcycling, in which the petitioners were riding, and upon search, recovered 1.1 gm. of Heroine like narcotic substance kept in 18 sachets from the possession of the petitioner no. 1. The police also recovered Rs. 21,200/- (96 notes of Rs. 200 denomination and 01 note of Rs. 2000 denomination) from the petitioner no. 1 and Rs. 1,51,980/- (295 notes of Rs. 500 denomination, 05 notes of Rs. 200 denomination, 22 notes of Rs. 100 denomination, 16 notes of Rs. 50 denomination, 01 note of Rs. 20 denomination and 46 notes of Rs. 10 denomination) from the petitioner no. 2. Accordingly, seizure list was also prepared.

3. Learned Counsel for the petitioners submits that petitioner no. 1 is the owner of the seized Royal Enfield motorcycle, having Registration Number BR 04Q/1982. He further submits that the petitioners were returning to their home



from the Registry Office, where the petitioners, along with their family members, had gone to get a piece of land registered in favour of petitioner no. 1. He further submits that e-challan of Rs 19,950/- was also made for registration of the land (Annexure 3), but the land broker, namely, Chandan Kumar, told them that the owner of the land is not ready to sell the land and returned the amount and no narcotic substance has been recovered from their possession and the said Chandan Kumar, in connivance with the police, implicated them in the present case. He further submits that the cash amount recovered from the possession of the petitioners is their own money and the same was not illegally earned. In support of the ownership of bullet motorcycle, the petitioners have annexed the Certificate of Registration, at Annexure-1 series. In support of the cash amount, the petitioners have annexed the copy of the pass book, showing withdrawal of Rs. 2,50,0000/- on 07.06.2019 (Annexure 1 series). He further submits that the confiscation proceeding has not been initiated as yet and in view of Section 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the confiscation proceeding may not be initiated till the conclusion of the trial. He further submits that the bullet motorcycle in question is kept in an open space in the police



station and is subject to deterioration and losing its road worthiness on daily basis.

4. Learned Counsel, assailing the order of learned Sessions Judge, submits that the learned Sessions Judge has failed to appreciate the legal provisions enshrined under Section 451 and 457 of the Code of Criminal Procedure, 1973, and the law laid down by the Supreme Court, in the case of **Sunderbhai Ambalal Desai v. State of Gujarat**, reported in (2002)10 SCC 283, as well as the judgment of co-ordinate Bench of this Court, in the case of **Jai Kishan Kumar v. Union of India**, reported in 2021 (1) BLJ 374.

5. On the other hand, learned Counsel for the respondents opposed the prayer of the petitioners for release of the cash amount as well as bullet motorcycle in their favour during pendency of the trial and/or confiscation proceeding and submits that petitioners were indulged in the trade of narcotic substance and the recovered cash amount was illegally earned amount.

6. I have heard learned counsel for the parties concerned and have also gone through the provisions prescribed in Code of Criminal Procedure, 1973, as well as Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985.



7. Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985, reads as follows:-

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—(1)

Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance [or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance[or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall



likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

8. From perusal of Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985, it appears that any conveyance used in carrying Narcotic Drugs and Psychotropic Substance is liable for confiscation, provided it is proved that the vehicle/conveyance was being used with the knowledge or connivance of the owner himself or his agent. In absence of any such material, there cannot be any confiscation in the first instance.

9. In view of the aforesaid, now the question of release of the motorcycle of the petitioner would be under the provisions of Sections 451 and 457 of the Code of Criminal



Procedure, 1973, which deal with the power of the Court to order for the disposal/custody of the property pending trial in certain case and the procedure by the police upon seizure of the property.

10. Sections 451 and 457 of the Code of Criminal Procedure, 1973, are being quoted herein below:-

“451. Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

457. Procedure by police upon seizure of property.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of



such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks 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.”

11. 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 Code of Criminal Procedure, 1973, dealing with seizure of property by the police has been dealt with by the Supreme 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 empowers 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 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 it 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."



12. In paragraphs 17 and 21 of **Sunderbhai Ambalal Desari** (supra), the Supreme 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.P.C. 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."

13. The Supreme Court, in another judgment reported



in the case of **Smt. Basavva Kom Dyamangouda Patil v. State of Mysore and Another**, reported in **1977 (4) SCC 358**, while dealing with the seizure of property by the police and the object and scheme of the various provisions of the Code of Criminal Procedure, 1973, 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."

14. Yet, in another judgment, in the case of **General Insurance Council and others v. State of Andhra Pradesh and others**, reported in (2010) 6 SCC 768, the Supreme Court has directed to ensure implementation of statutory provision as contained in Sections 451 and 457 of the Criminal Procedure Code so as to avoid natural decay on account of weather conditions of seized vehicle in Police Station and in paragraphs 11 and 14 of **General Insurance Council** (supra) 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 cannibalized so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued herein above, 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."

15. In view of the aforesaid discussion of law as well as the facts involved in the matter, I am of the considered opinion that the learned Sessions Judge, Bhonpur, at Ara, has failed to exercise his jurisdiction in correct legal perspective and thereby committed material irregularity inasmuch as if the motorcycle, 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 no. 1 is the owner of the motorcycle and the same is lying in open place in the police station since 2018. It is also not in dispute the cash amount was seized from the



petitioners.

16. Accordingly, the order, dated 04.12.2020, passed, by the learned Sessions Judge, Bhojpur, at Ara, in N.D.P.S. Case No. 10 of 2019, arising out of Ara Town Police Station Case No. 296 of 2019, is set aside and the learned Sessions Judge, Bhojpur, at Ara, is directed to release the bullet motorcycle and currency notes, in question, in favour of the petitioners after verifying the ownership/registration of the bullet motorcycle 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 no. 1 shall furnish adequate security of Rs. 2,00,000/- and petitioner no. 2 shall furnish security of Rs. 1,51,980/- to the satisfaction of the learned District Court.

(ii) That before handing over the bullet motorcycle and currency notes to the petitioners, a detailed and proper *panchnama* of the said bullet motorcycle and currency notes after taking its photograph shall be prepared.

(iii) That the petitioners shall also execute bond that the bullet motorcycle, in question, and the equivalent value of currency notes shall be produced as and when required during



the trial of the case.

(iv) That the petitioner no. 1 shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the bullet motorcycle till pendency of the trial.

17. In the result, this writ application is allowed with the aforesaid observations and directions.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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