

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 206 of 2020

Santosh Chowdhury

Vs

The State of West Bengal.

For the Petitioner : Mr. Amajit De,
Mr. Shakshi Rathi,
Mr. Pratik Acharjee.

For the State : Mr. Md. Anwar Hossain,
Mr. Sreyashee Biswas.

Heard on : 07.02.2023

Judgment on : 01.03.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred against an order dated 24.06.2019 passed by the learned Judge, 3rd Special Court, Purba Burdwan in Sessions Case No. 08 of 2016, arising out of Kanksa Police Station Case No. 46 dated 28.01.2016 for offence punishable under Sections 20(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act 1985 and Sections 25/35 of the Arms Act, thereby refusing the prayer made under Section 457 of Code of Criminal Procedure for return of the seized vehicle of the petitioner.

The petitioner's case is that the petitioner is the registered owner of an Omni bus (private use) being registration no. WB40Z2550, Model-Scorpio LX9ST, Chassis No.- MA1TA2MXND2K40971, engine no.- MXD4K 17574. The aforesaid vehicle was registered on 26.11.2013 by the Motor Vehicle Department of Government of West Bengal and said registration is valid up to 24.11.2028.

One Prabir Kumar Ghosh, S.I. of Kanksa Police Station lodged a complaint being Kanksa Police Station Case No. 46 dated 28.01.2016 for offence punishable under Section 20(b)(ii)(c)/29 of Narcotic Drugs and Psychotropic Substances Act 1985 and Sections 25/35 of the Arms Act against 10 persons.

The learned Judge, 3rd Special Court, Purba Burdwan was pleased to pass an order of acquittal on 20.04.2017 in the favour of the petitioner and 11 others from the charge under Sections 20(b)(ii)(c)/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and under Sections 25/35 of the Arms Act.

The petitioner, being the registered owner of the Scorpio vehicle being registration no. WB40Z 2550, Model-Scorpio LX9ST, Chassis No.- MA1TA2MXND2K40971, Engine No.- MXD4K 17574, made an application under Section 457 of Code of Criminal Procedure for return of the aforesaid seized vehicle before the learned Judge, 3rd Special Court, Purba Burdwan on 29.11.2018.

The application was heard on 24.06.2019 and the learned Judge, 3rd Special Court, Purba Burdwan did not find any scope to entertain the application for return of the seized vehicle made by the petitioner and was pleased to reject the same.

It is submitted that the learned Trial Court rejected the same without any cogent justifiable reason.

That although the petitioner was acquitted from the Kanksa Police Station Case No. 46 dated 28.01.2016 by a competent Court of law but still the learned Judge failed to dispose of the application of the petitioner made under Section 457 of Code of Criminal Procedure, in accordance with law.

Mr. Amajit Dey, learned counsel for the petitioner has submitted that the learned Judge passed an order in an erroneous manner which is contrary to the statute.

The order passed by the Trial Court against your petitioner is bad in law and is liable to be set aside.

Mr. Md. Anwar Hossain, learned counsel for the State is present.

The order dated 24.06.2019 in Special Case 08/2016 under revision is as follows:-

Special Case No. 08/2016

Order No.44
24.06.2019

The petition dated 29.11.2018 filed by the petitioner Santosh Chowdhury, claimed to be the owner of seized Scorpio car, bearing registration number W.B.40Z/2550, praying for return of the said vehicle in his favour, is taken up for further hearing and order.

Heard Both sides.

Having heard the submissions of Ld. Advocate for the petitioner and Ld. P.P.-in-Charge for the prosecution and on perusal of the materials on record including the judgment in connection with this case delivered on 20.04.2017, admittedly it appears that the present petitioner Santosh Chowdhury was an accused in connection with this case. Although he has been acquitted from this case by the said judgment but this court, in its said judgment, already held that "the seized contraband items be destroyed forthwith, if not already done, in accordance with law, the Scorpio vehicle bearing registration number W.B. 40Z/2550 shall vest with the State, the other Alamats, if any, shall be dealt with in accordance with law, after the period of expiry of appeal."

There is no whisper from the Ld. Advocate for the petitioner or from Ld. P.P.-in-Charge that any appeal was preferred against the said judgment and order of this court.

So, considering the aforesaid facts and circumstances and in existence of the said judgment and order, vesting the Scorpio vehicle bearing registration number W.B. 40 Z/2550 with the State, I find there is no scope to entertain this application for return of the seized vehicle to this accused/petitioner.

Hence, the petitioner dated 29.11.2018 be and the same is rejected.

Dictated & Corrected by,

**Sd/-
Judge, 3rd Special Court,
Purba Bardhaman**

Section 451 of the Code of Criminal Procedure, lays down:-

“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.

Explanation.- For the purposes of this section, "property" includes-

- (a) property of any kind or document which is produced before the Court or which is in its custody,*
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”*

Section 452 of the Code of Criminal Procedure, lays down:-

“452. Order for disposal of property at conclusion of trial.-

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term " property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.”

The Supreme Court in **Sunderbhai Ambalal Desai vs State of Gujarat, (2003 SCC (Cri) 1943), on October 1, 2002**, held:-

“8. The question of proper custody of the seized article is raised in a number of matters. In Basavva Kom Dyamangouda Patil v. State of Mysore [(1977) 4 SCC 358 : 1977 SCC (Cri) 598] this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: (SCC p. 361, para 4)

“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.”

(emphasis supplied)

9. The Court further observed that where the property is stolen, lost or destroyed and there is no *prima facie* defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with

the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

Thus in view of the guidelines of the Supreme Court, the findings of the Magistrate is not in accordance with law and thus an abuse of the process of law/court.

The Sessions Judge was also wrong in confiscating the vehicle to the State on acquitting all the 11 accused persons including the petitioner (accused no. 11) who has claimed to be the owner of the vehicle on filing supporting documents relating to the vehicle.

Accordingly the order under revision dated 24.06.2019 passed in Sessions Case No. 08 of 2016 arising out of Kanksa Police Station Case No. 46 dated 28.01.2016, by the learned Judge, 3rd Special Court, Purba Burdwan **is set aside being not in accordance with law.**

The learned Trial Court will return the vehicle as per the provision of Section 452 of Cr.P.C. by passing appropriate orders keeping with the guidelines of the Supreme Court in **Sunderbhai Ambalal Desai vs State of Gujarat (Supra)** within one month from the date of this order.

CRR 206 of 2020 is allowed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)