

20.03.2023
Ct.-42
Item No.-03

CRR 1996 of 2022
Sushil Bagini
-Vs-
State of West Bengal

For the petitioner:	Mr. Partha Pratim Das. Adv., Mr. Monojit Chakraborti, Adv.,
For the State:	Ms. Anasuya Sinha, Adv., Ms. Jonaki Saha, Adv.

On 5th August, 2021 one Asish Kumar Das, ASI of Police, Enforcement Branch, Howrah Police Commissionerate lodged a written complaint to the Officer-in-Charge of the Liluah Police Station stating, inter alia, that that on 5th August, 2021 at about 2.15 pm he received a secret information that spurious water was being stored, packaged and labeled under the heading “Shipra Aqua”. He obtained permission of his superior officer and went to the spot to verify the aforesaid information. At the spot they found a factory open and one person, named Pritam Bagani was sitting there. It was found that the said person was engaged with illegally manufacturing, refilling, storing and selling packaged drinking water from his factory under the brand name of Shipra Aqua. The Police Officer seized machineries and fixtures used for manufacturing so called mineral water and finally submitted complaint in the local P.S. On the basis of the said complaint, police registered Liluah Police Station Case No.271 of 2021 under Section 272/273/420 of the IPC. The petitioner was granted pre-arrest bail by the learned Sessions Judge on 1st September, 2021. Subsequently, on 6th September, 2021 the petitioner made an application for return of the seized articles before the learned Chief Judicial Magistrate at Howrah. The learned Chief Judicial Magistrate called for report of the

Investigating Officer twice. The first report was submitted on 18th September, 2021 by the Investigating Officer raising his objection against the return of the seized articles. The learned Chief Judicial Magistrate was not satisfied with the said report and directed the Investigating Officer to submit further report. However, till 13th December, 2022, petitioner's application has not been disposed of by the learned Chief Judicial Magistrate at Howrah. So is the instant revision.

The learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in **2002 (8) SCC 525** and submits that Section 451 and 457 of the Code of Criminal Procedure delineate detailed provision for return seized articles during trial. The above provisions run thus:-

"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."

"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."

Thus, it is submitted by the learned Advocate for the petitioner that the seized articles being water pump, stabilizer, water pipes etc should be returned to the petitioner on execution of proper bond.

Section 451 clearly empowers the court to pass appropriate order with regard to said property, such as –

- (i) for the proper custody pending conclusion of the inquiry or trial;
- (ii) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary;
- (iii) if the property is subject to speedy and natural decay, to dispose of the same.

Since the petitioner is the owner of the seized articles the said articles may be returned to him after obtaining proper security and on condition that he will produce the said articles in court as and when necessary for the purpose of trial.

I have carefully gone through the decision of the Hon'ble Supreme Court referred to on behalf of the petitioner hereinabove.

The Hon'ble Supreme Court made a detailed guideline for return of the valuable articles and currency notes, the articles which are subject to natural decay and destruction etc.

In the instant case police seized certain articles used by the petitioner allegedly for the purpose of packaging spurious water to sale the same as mineral water. It is submitted on behalf of the State that the seized articles are alamat of the criminal case.

Be that as it may, when the learned Chief Judicial Magistrate at Howrah has already fixed hearing of the application filed by the petitioner for return of the seized article and for such purpose he called for a report of the Investigating Officer, I am not inclined to pass any order at this stage.

The instant revision is disposed of directing the learned Chief Judicial Magistrate to hear out the application filed by the accused/petitioner praying for return of the seized articles within one month from the date of communication of this order.

Parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)