

Date: 11.8.2023

Court No: 4

Item No: 5

CALCUTTA HIGH COURT

IN THE CIRCUIT BENCH AT JALPAIGURI

CRR 205 OF 2023

In Re: An application under Section 401 read with Section 482
of the Code of Criminal Procedure;

And

In the matter of: **Manoj Kumar Gupta**

....Petitioner

Mrs. Matan Chakraborty

.....For the petitioner

Ms. Aditi Shankar Chakraborty

Mrs. Arjun Chowdhury

.....For the State

This application under Section 401 read with Section 482 of the Code of Criminal Procedure is directed against the order dated 13-07-2023 passed by the Learned Additional District and Sessions Judge 3rd (Special) Court, Jalpaiguri in connection with special case No. 85 of 2023. (Under Electricity Act). Learned Judge by the said order has rejected the prayer for release of his vehicle bearing No. WB 78/6998. It is the contention of the petitioner that the Learned Judge without going into the merit of the case and without passing a reasoned order re rejected the application of the

petitioner on the ground that owner is not cooperating. It is further contended that Learned Judge failed to appreciate the merit of the application while rejecting the same. It is also contended that the Learned Judge failed to appreciate that the petitioner being the owner of the vehicle is suffering huge loss each and every day due to the seizure of the vehicle as the vehicle is used for commercial purpose.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party State of West Bengal. Perused the petition filed and materials on record. As the instant matter involves prayer for release of the seized vehicle in connection with an offence it is necessary to consider the Provisions contained in Section 451 of Code of Criminal Procedure.

As per Section 451 of Code of Criminal Procedure 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.

In the case of Inter Continental Agency VS Amin Chand reported in AIR 1980 S.C. P-951 the Hon’ble Supreme Court observed that owner of the property is entitled to its delivery, and if the property is lost and not traceable while in Court’s custody the owner thereof is entitled to its value.

In the case of Ashok Vs State reported (2001) 9 SCC. 718, it was observed by the Hon’ble Supreme Court as follows:

‘We do not think it necessary to keep the vehicle in the compound of the Court indefinitely till the final disposal of the case. It is more advisable to entrust it to the Registered Owner on behalf of the Court on certain conditions. In the case of Sunderbhai VS State reported in AIR – 2003 S.C. 638. The Hon’ble Court observed that the powers are to be exercised by the

concerned Magistrate. The Magistrate would take immediate action for seeing that powers under Section 451 CrPC 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.'

The Learned Judge while rejecting the prayer for release of the vehicle observed as follows:

'The record is put up by a petition filed by Manoj Kumar Gupta.

Another petition has been filed on his behalf praying for release of vehicle bearing No WB-78/6998.

The record is taken up for hearing. It has been submitted that the present petitioner is not the driver of the vehicle. He is the owner of the vehicle. The vehicle is lying in open field of P.S. Causing damage to the vehicle.

On the other hand Ld. P.P. raises objection inter alia submitting that the owner of the vehicle is not cooperating with the

investigating agency. He failed to supply the particulars of the driver of the vehicle, though he (the present petitioner) being employer was duty bound to furnish the particulars of the offending driver. It has further been contended that the vehicle dashed WBSEDCL'S. Electricity distribution network Causing damage to the tune of Rs. 500,000/- to Govt property and further due to rash and negligent act of dashing the whole electricity supply was suspended. Causing tremendous inconvenience to the public at large.

Non-cooperation of the owner of the vehicle with the investigating agency disentitles him for release of the vehicle.

Hd. Both sides.

I find that the accused is still absconding and the owner is not co-operating with the investigating agency regarding supply of the details of the driver of the vehicle. If the driver could not be brought on record that would cause serious prejudice to state as the offender would go scot free.

Hence in this circumstances I am not inclined to release the vehicle at this stage hence the petition filed today stands rejected.'

Upon perusing the provisions contained in Section 451 of the Code of Criminal Procedure and the Judicial decisions mentioned above it will appear that in the normal course owner of the property is entitled to delivery of vehicle seized. The Learned Court rejected the prayer for release of vehicle on two grounds firstly the driver of the vehicle is absconding and the petitioner/owner is not co-operating with the investigating agency and he failed to supply the particulars of the driver of the vehicle.

Now when a vehicle is seized in a connection with an offence the said vehicle cannot be refused to be delivered to the actual owner in accordance with Section 451 of the Code of Criminal Procedure simply on the ground that the driver of the vehicle who is involved in the offence is absconding. In the instant case allegation is made against the petitioner for not furnishing the particulars of the driver but it is not mentioned what particulars were sought for from the petitioner. Normally an owner of a vehicle who employs a driver may keep a copy of his driving license and copy of Aadhar Card. Moreover when an owner of a vehicle engages driver from driver centre he may not have the particulars as such particulars are with the driver centre.

As the driver concerned already moved an application for Anticipatory bail before the Learned Additional District and Sessions Judge 3rd (special) Court Jalpaiguri with notice upon learned P.P and report was called for from I.O. it cannot be claimed that address of the driver who is accused in the case is unknown. The petitioner/owner has also annexed copy of the order showing particulars of the said case in the instant petition. As a police officer is empowered under Section 41A of the Code of Criminal Procedure in all cases where the arrest of a person is not required under the provision of sub-Section (1) of Section 41 issue a notice directing the person against whom a reasonable complaint has been made or credible information is received or a reasonable suspicion exists that he has committed a cognizable offence to appear before him or at such other places as may be specified in the notice.

In the instant case there is no such allegation that notice under Section 41A of CRPC is issued and the same is not complied. Moreover it appears that the punishment under Section 139 of the Indian Electricity Act is fine which may extend to Rs. 10,000/-. Thus there is no bar in issuance of notice and thereafter taking steps under Section 41A(4) of the Code of Criminal Procedure if the notice is not complied.

In the facts and circumstances mentioned above this Court is of the view that vehicle of the petitioner ought to have been released and the Learned Judge erred in refusing the prayer of the petitioner for release of the vehicle.

Thus this Revisional Application stands allowed. Order dated 13-07-2023 passed by the Learned Additional District and Session Judge 3rd (Special) Court Jalpaiguri in connection with special case No. 85 of 2023 (under Electricity Act) is hereby set aside. It is ordered that vehicle bearing No. WB-78-6998 be released and returned to the petitioner upon petitioner furnishing a personal bond of Rs. 50,000/- before Learned Additional District and Session Judge 3rd (special) Court Jalpaiguri, Original Registration Certificate, with the condition that the petitioner shall not transfer or alienate the vehicle during pendency of the case and shall produce the vehicle as and when required by Court.

This application stands disposed. Let a copy of this order be sent to the Learned Court below.

(Biswaroop Chowdhury,J.)