

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1439 of 2021

Tarun Kumar Majhi

Versus

The State of West Bengal

For the Petitioner : Mr. Pinak Kumar Mitra, Adv.
Mr. Soumen Nanda, Adv.

For the State : Ms. Faria Hossain, Adv.
Ms. Suparna Chatterjee, Adv.

Heard on : 16.04.2024

Judgment on : 15.07.2024

Ajay Kumar Gupta, J:

1. By filing this revisional application, the petitioner has challenged the propriety, legality and correctness of the impugned Order No. 2 dated 20th April, 2021 passed by the learned Additional Sessions Judge, 3rd Court, Burdwan in Criminal Misc. Case No. 578 of 2021, thereby rejected the prayer of the petitioner for releasing of the seized vehicle being registration No. WB-52 AG-4147 involved in Special Case No. 34 of 2017 arising out of Nandan Ghat Police Station Case No. 180 of 2017 dated 15.07.2017 under Sections 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The essential facts of the instant case are relevant for the purpose of disposal of this instant case as under:

2a. The petitioner is an advocate by profession and in the year 2017, he purchased a vehicle, namely, Hyundai Xcent Car being registration No. WB – 52 AG-4147 financed by Axis Bank amounting to Rs. 5,95,796/- payable in 84 months equal instalments at the interest rate 9.50% in connection with the car loan account number AUR000502322954.

2b. It is the contention of the petitioner that the said car was seized by the police in connection with Nandan Ghat P.S. Case No.

180 of 2017 dated 15.07.2017 under Sections 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and since then the said car is under the custody of the investigating agency.

2c. It is further contention that though the petitioner is absolutely innocent and he has no way connected with the aforesaid Nandan Ghat P.S. Case. However, his name was initially transpired in the First Information Report but after culmination of investigation, he was discharged from the said case on the basis of prayer made by the investigating officer before the learned Court below as no evidence found against the petitioner. However, his car is still in the custody of police as an alamt of this case.

2d. It is further case of the petitioner that the said proceeding has been finally disposed of on 23.12.2020 by the learned Special Judge, 3rd Court (NDPS) thereby acquitted the accused persons, namely, Sanjib Roy, Sukhdeb Das, Samir Saha and Pintu Mallik from the charge framed under Sections 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the learned Court was pleased to pass the following order in respect of the seized vehicle of the petitioner as under:

“Since there is no prayer for release of the alleged seized vehicle during investigation or trial of this case the said vehicle is liable to be confiscated to the state

but the same along with other seized alamats and the mat Exts be preserved till disposal of this case after trial of the absconding accused Bhagna @ Rajus Debnath @ Raju Das.”

2e. It is further contention of the petitioner that when he came to know about the final disposal of the case by way of acquittal of the accused persons, he preferred an application before the learned Trial Court praying for releasing of his vehicle under Section 452 of the CrPC but the learned Trial Court has rejected his prayer for return of his vehicle on 20.04.2021 vide Order No. 2 in Criminal Misc. Case No. 578 of 2021 only on the ground that the application u/s 452 of the CrPC filed by the petitioner made at belated stage. It has no merit to release of the said vehicle. Petitioner is owner of the offending vehicle. He made an application for releasing of his vehicle after knowing the final result of the case of acquittal. As such, the instant revisional application has come up before this Court with a prayer to set aside the impugned order and praying for releasing of the vehicle to the original owner i.e. petitioner herein.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsels appearing on behalf of the petitioner submitted that the petitioner is an advocate by profession and he is

the owner of the seized vehicle being registration No. WB – 52 AG-4147. He had been falsely implicated into this case by naming in the FIR but subsequently during investigation, no evidence found against the present petitioner as such, investigating officer prayed for discharge. As such, he has been discharged from Nandan Ghat Police Station Case No. 180 of 2017 dated 15.07.2017 under Sections 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3a. It is further submitted that after knowing the final result of acquittal of other accused persons, he has applied for returning of his vehicle under Section 452 of the CrPC but the learned Court below outrightly rejected his prayer for returning of his seized vehicle only on the ground that the petitioner has made his application for releasing at belated stage, which has no merit to release the said vehicle.

Learned advocate has referred the following judgments to bolster his submissions that seized vehicle cannot be kept in the custody of police or shall not remain in open space. It may be released with terms and conditions to the original owner.

i. Shajahan Vs. Inspector of Excise & Ors.¹

ii. Anil Navnath Marathe Vs. State of Maharashtra and Anr.²

iii. Sunderbhai Ambalal Desai V. State of Gujarat³

SUBMISSION ON BEHALF OF THE STATE:

4. On the other hand, learned counsels appearing on behalf of the State submitted that the learned Court has rightly rejected the prayer for return of the seized vehicle. If it would be released then again it may be used to transport contraband goods as such order passed by the learned Court should be affirmed. Furthermore, prayer was made at belated stage.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

5. Having heard the submissions of the parties and on perusal of the impugned order, this Court finds the learned Court below rejected his prayer only on the ground that the application was filed under Section 452 of the Cr.PC by the petitioner at the belated stage. Application has no merit to release the said vehicle. That ground of delay is not sufficient to reject his prayer for releasing of the vehicle

¹ 2019 SCC Online (Ker) 3685

² (2011) 1 MhLJ (Cri) 462

³ (2002) 10 SCC 283

though there is no dispute that the present petitioner is not the owner of the seized vehicle.

6. Furthermore, he has been discharged from the case at the initial stage before taking cognizance of the offence by the learned Trial Court. At the same time, the said case was disposed of by declaring the other accused persons not found guilty and acquitted them from the said case. Coming to know the final result of the case, the present petitioner has filed the application for releasing of his vehicle. It is also not disputed that the said vehicle was not confiscated or disposed of. The vehicle is still lying with the custody of the police. Question of delay in filing application for release of vehicle after final conclusion of trial does not arise.

7. In view of the fact, there is no any impediment to allow the prayer for releasing of the vehicle under Section 452 of the Cr.PC. This Court would like to refer Section 452 of the CrPC for ready reference and for better understanding as under:

“S. 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 securities, 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."

8. Upon perusal of the said provision as well as judgments referred by the petitioner, this Court finds there is a specific provision for order of disposal of the property at conclusion of trial. Here the

property is vehicle being registration No. WB – 52 AG-4147 which was seized in the instant case and the trial has already been concluded. It appears from the final judgment that the learned Court below passed an order with regard to the seized vehicle of the petitioner as under:

“Since there is no prayer for release of the alleged seized vehicle during investigation or trial of this case the said vehicle is liable to be confiscated to the state but the same along with other seized alamats and the mat Exts be preserved till disposal of this case after trial of the absconding accused Bhagna @ Rajus Debnath @ Raju Das.”

And acquitted the accused persons, namely, Sanjib Ray, Sukdeb Das, Samir Saha and Pintu from the charges framed under Sections 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Only one accused person, namely, Bhagna Raju @ Raju Debnath has been found absconding from the said case and whenever he will arrest, his case may be started de novo trial till such date, the vehicle would not be confiscated or disposed of in view of the order passed by the learned Trial Court as such, vehicle is still in the custody of police authorities.

9. Furthermore, it appears from the provision stipulated under sub-Section (1) of Section 452 that 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.

10. Similarly, sub-Section (2) of Section 452 also provides that 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 securities, 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.

11. In view of the provisions stipulated under sub-Sections (1) and (2) of Section 452 of CrPC, there is no impediment to allow the prayer for releasing of the vehicle to the petitioner since he is the owner of the seized vehicle and he has submitted sufficient document to show that he is the owner of the seized vehicle. The trial of the case has already been concluded in acquittal. It is not that the absconding accused is the owner of the seized vehicle as such prayer for releasing of vehicle may be disallowed. Question of filing application for

releasing of vehicle at belated stage does not arise as it should be allowed at conclusion of trial.

12. In the light of above discussions, this Court is of the opinion that the seized vehicle can be allowed to be returned to the registered owner as an interim custody subject to the following conditions: -

i. Vehicle be released upon furnishing of the bond with surety of Rs. 6,00,000/- (Rupees Six Lakhs) only and on further condition that the petitioner will produce the said vehicle before the learned Trial Court as and when called for and he will not change the nature and character of the vehicle till final decision of the learned Trial Court.

ii. The petitioner shall not transfer, sell or alienate the seized vehicle without final decision of the learned Trial Court.

iii. The seized vehicle shall not be used for the commission of any offence.

13. Accordingly, the impugned Order No. 2 dated 20th April, 2021 passed by the learned Additional Sessions Judge, 3rd Court, Burdwan in Criminal Misc. Case No. 578 of 2021, thereby rejecting the prayer of the petitioner for releasing of the seized vehicle being registration No. WB-52 AG-4147 involved in Special Case No. 34 of 2017 arising out of Nandan Ghat Police Station Case No. 180 of 2017 dated 15.07.2017 under Sections 20(b)(ii)(C) and 29 of the Narcotic

Drugs and Psychotropic Substances Act, 1985 is hereby set aside. The fate of the said vehicle will be decided by the learned Trial Court in accordance with law.

14. Accordingly, **CRR 1439 of 2021** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

15. Case Diary, if any, is to be returned to the learned Advocate for the State.

16. Let a copy of this judgment and order be sent to the learned Court below for information and taking necessary action.

17. Interim order, if any, stands vacated.

18. Parties shall act on the server copies of this order uploaded on the website of this Court.

19. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)