

D/L 45
26.11.2024
Saikat
Ct. No.237

CRR 3635 of 2022

**Eastern Coalfield Limited
Vs.
State of West Bengal & Anr.**

Mr. Dipayan Dan, Adv.
Mr. Pradipta Bose, Adv.
....for the Petitioner

Ms. Sayanti Santra, Adv.
Ms. Nahid Ahmed, Adv.
....for the State

Service report filed by the State is taken on record. In spite of service opposite party No.2 is not represented.

The petitioner in this application has challenged the order dated 5th September, 2022 passed by the learned Chief Judicial Magistrate, Paschim Bardhaman. By the impugned order the learned court below while disposing an application for custody and disposal of seized coal, directed to hand over the 201.03 MT seized coal to the opposite party herein, against whom allegation of the theft and dishonestly receiving stolen property has been alleged by the prosecution.

Petitioner contended that a complaint was lodged by the Area Security, Salanpur, Eastern Coalfields Limited, regarding illegal encroachment of land and clandestine coal removal against the private opposite party herein on 20th September, 2016. The complaint lodged by the complainant, *inter alia*, states that on 7th June, 2021, a joint raid was conducted at the premises of the opposite party/accused, whom the complainant

has already blacklisted for encroachment of land and stacking of illegal coal in his factory. The owner of the factory was directed to produce valid document regarding the coal inside the factory. However, opposite party herein failed to produce any document in support of ownership in respect of said stacked coal weighing to 201.03 MT. Accordingly, the coal was seized and was handed over on execution *zimma nama* to the authorised representative-cum-Senior Manager (M) of Bonjemihery Colliery, Asansol.

During investigation of the case the prime accused, Anirudha Kr. Singh/opposite party No.2 herein made a prayer before the learned Magistrate that the seized coal belongs to him and he has sufficient documents to prove his ownership in respect seized material and as such the seized coal may be returned in his favour.

On the basis of said application the learned Magistrate directed the investigating authority to submit a report and by a report the investigating authority raised its strong objection in returning the seized coal in favour of the said opposite party herein.

It is submitted that ignoring the objection raised by the investigating officer and also the materials which are already on record making the complicity of the opposite party No.2 herein, the court below by the impugned order directed to release the seized coal in favour of the opposite party, Anirudha Kr. Singh.

Being aggrieved by that order Mr. Dan, learned advocate on behalf of the petitioner submits that the order impugned

resulted gross abuse of process of the court and suffers from perversity. In fact, the order impugned caused serious injustice to the petitioner and by the order impugned the learned Magistrate has vested a person who is accused of theft and dealing with the stolen property. In fact, the court below completely overlooked the fact that the opposite party herein has failed to produce any document before the investigating officer to establish that he is legally and rightfully entitled to the possession of the seized coal. Moreover , the court below did not give opportunity to the petitioner herein of being heard on the point of release of the seized coal in favour of the opposite party No.2. He further submits that opposite party No.2 is a blacklisted offender and as such he is not entitled to get the possession of the seized coal. He further submits that the court below has virtually entrusted the coal to the person who is responsible for theft of such coal and to a person who is accused of possession of clandestinely removal coal. Accordingly, he has prayed for setting aside the order impugned.

Ms. Ahmed, learned counsel appearing on behalf of the State supported the case of the petitioner and submits that the order impugned which was passed ignoring report of investigating officer suffers from impropriety and is liable to be set aside.

I have considered the submissions made by both the parties. The specific case of the petitioner is that the opposite party herein was blacklisted in the year 2016, which reflected

from a letter dated 20th September, 2016. However, when the opposite party was directed to produce the document in support of ownership of the seized coal he could not produce any material/relevant document in support of his ownership which is very much reflected in the order impugned. Investigating Officer specifically reported that the documents submitted by the opposite party does not support opposite party's contention. Moreover, the court below relied upon certain documents which includes copy of purchase register starting from 31st March, 2017 to 31st March, 2020. A person who was blacklisted in the year 2016, how his purchase Register from the year 2017 onwards became, relevant before the court below for giving interim custody is not understandable. Other documents placed by opposite party in support of ownership are irrelevant documents.

In fact an order of interim custody is intended to preserve the property pending trial. The words "for the proper custody of such property pending the conclusion of the enquiry of trial" in section 451 and the words "delivery of such property to the person entitled to the possession thereof" in section 457 have to be understood in its true perspective. Accordingly, the magistrate has to decide who was entitled to possession at the time of seizure and not merely who was in possession, because a man may be in possession but not entitled to it.

In the present case though private opposite party in his application for return of seized coal dated 11.06.2021 claimed that he has all valid documents regarding his ownership to the

seized material, but he failed to produce any relevant documents in support of ownership and as such investigating agency raised strong objection as said private opposite party is not “entitled to possession” of the seized coal. When there are rival claims to a seized goods which is allegedly stolen, the property could be released to the person who has the prima facie rightful or lawful title to hold the property.

Supreme Court in **State of Bihar and Anr. Vs. Arbind Kumar and Anr.** reported in **(2012) 12 SCC 395** in the context held as follows:

“14. In the subsequent order dealing with the ownership of the wheat the High Court has only taken note of the fact that as the respondents herein were prepared to furnish adequate/sufficient security to the satisfaction of the court below for release of the wheat in question, the wheat could have been released by the CJM. In case the learned CJM came to the conclusion after appreciating the evidence on record that the respondents/applicants were not in a position to show any document which may show their ownership to the wheat, there was no justification for the High Court to issue directions for release of such material merely because applicant could furnish the security.

If it is so, any stranger or third party may give sufficient security and get the seized goods release in his favour. Such a course is not permissible even while deciding the application under Section 451/457 of the Code of Criminal Procedure, 1973. A person having no title/ownership over the seized material may get the same released on furnishing security and sell it in black market and earn profit several times more than the amount of security furnished by him. We fail to understand as how such an order of release which defeat the very purpose for which the EC Act was enacted, could be passed.”

At the time of seizure the custody of the seized coal was given to Senior Manager (M) of Bonjemihery Colliery, Asansol on execution of zimmanama and there is no reason as to why it is required to be handed over to the opposite party herein against whom the allegation of theft of the said seized article has been leveled by the petitioner herein. Moreover, section 451 does not deal with the declaration of ownership of property which is the

subject-matter to be decided by a competent civil court. The interim custody only deals with the interim possession of the seized article during pendency of trial of the criminal case.

In view of the aforesaid discussion, I do not find any justification to pass the order impugned in giving custody of the seized coal to the opposite party herein, pending investigation and trial and as such the order impugned suffers from impropriety and perversity and is liable to be set aside.

In view of the above, CRR 3635 of 2022 is allowed. The order impugned dated 5th September, 2022 passed by the learned Chief Judicial Magistrate, Paschim Bardhaman in connection with G.R. Case No. 1565 of 2021 is hereby set aside.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Dr. Ajoy Kumar Mukherjee, J.)