

28.02.2024
Sl no.2
Piya (PA)
Ct no. 30

CRR 4449 of 2023

(Assigned)

Gurnam Singh

Vs

The State of West Bengal & Ors.

Mr. Apurba Kumar Ghosh
Mr. Rudranil Ghosh

...for the Petitioner.

Mr. Manoranjan Mahata

...for the State.

1. The present revision has been filed against an order dated 19/10/2023 passed by Learned, Additional Chief Judicial Magistrate, Durgapur in G.R. Case No.1196/2023, arising out of Coke-Oven Police Station Case No. 105/2023 dated 10.07.2023 under Sections 420/407/120B of the Indian Penal Code.
2. **The relevant part of the order under revision is as follows:-**

G.R. No. 1196/2023

Order dated 19.10.2023

“.....Ld. Advocate for the defacto complainant submitted that the defacto complainant has objection in case of return of the seized vehicle. It is submitted that the vehicle was used to carry coal from the godown of Adanis to Shyam Steel Factory yard and at the time of transportation of coal, the original coal has been changed and its quality as was mentioned at the time of departure from Adanis Godown has been changed by accused person/driver and the person who carried the business of the seized vehicle. It is highlighted that the son of the present petitioner Sandip Singh entered Shaym Steel Yard with the loaded track with inferior coal but the vehicle was drove by Sk. Amir when the said vehicle started its journey with actual coal from Adanis Godown. He submitted that Adanis Godown delivered best quality coal but when the truck reached to the Shyam Steel factory yard, the quality of coal was of less quality. According to him due to the malpractice by the person who drove the vehicle or who managed the business with the vehicle including its owner, the defacto complainant suffered loss of Rs.1,75,000/- and so the defacto complainant on behalf of his company Shyam Steel has objection.....

..... that the prayer for interim custody of the seized vehicle is allowed in favour of the petitioner Gurnam Singh with the condition to submit a bond that after return he will produce the vehicle in case of order by court and in default of that Rs.35 lac will be forfeited from his account to State and he will have to submit a bank guarantee of Rs.1,75,000/- from a Nationalized Government Bank which will be kept as security to indemnify the defacto complainant if in the trial in this case, the defacto complainant/prosecution can prove the offence and prove the involvement of the owner of the said vehicle or his men, that due to change of quality the defacto complainant suffered loss of Rs.1,75,000/-.

Send a copy of this order to the I.O. of this case and he is directed to return the seized vehicle by preparation of receipt memo and by taking photographs of four side of the vehicle with the signature of the petitioner Gurnam Singh, if bank guarantee be submitted and bond as per order be furnished.

To date.

Dictated and corrected by me

Sd/-
A.C.J.M., Durgapur”

3. 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.”

4. 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."

5. 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.”*

6. It appears from the order under revision that the learned Magistrate has ordered:-

“..... and he will produce the vehicle in case of order by court and in default of that Rs.35 lac will be forfeited from his account to State and he will have to submit a bank guarantee of Rs.1,75,000/- from a Nationalized Government Bank which will be kept as security to indemnify the defacto complainant if in the trial in this case, the defacto complainant/prosecution can prove the offence and prove the involvement of the owner of the said vehicle or his men, that due to change of quality the defacto complainant suffered loss of Rs.1,75,000/-.....”

**Sd/-
A.C.J.M. Durgapur**

7. The allegation in the complaint is regarding changing the quality of coal, on transit while being transported, for which the defacto complaint allegedly suffered a loss of Rs. 1,75,000/-.
8. The learned Magistrate without going to trial/or passing a final order has directed the petitioner to submit a bank guarantee of Rs. 1,75,000, so that the complainant can be indemnified if the case is proved against the petitioner. The said order of the Magistrate is clearly an abuse of the process of the Court, which has been passed without a trial or a final order.
9. A Magistrate while disposing of a case on trial is to pass an order in accordance with law, which if in favour of the complainant may include necessary reliefs.
10. In the present case the learned Magistrate has also directed for submitting a bond of Rs. 35 lakhs, which

appears to be appropriate, while considering an application under Section 451 Cr.P.C.

11. Thus to meet the ends of justice the order dated 19/10/2023 is modified to the following extent:-

“..... That the prayer for interim custody of the seized vehicle is allowed in favour of the petitioner Gurnam Singh/registered Owner of the vehicle (Truck) bearing No. NL-01/AD 7418 on furnishing a bond of Rs. 35 lakhs and on production of all original documents in support of the said vehicle. The nature and character of the vehicle shall not be changed till final disposal of the case and the petitioner shall produce the vehicle as and when directed by the Court until further orders.”

- 12.** The total procedure of the return of the vehicle by the Trial Court shall be done as per the guidelines of the Supreme Court in ***Sunderbhai Ambalal Desai vs State of Gujarat (Supra)*** within one month from the date of this order.
- 13. CRR 4449 of 2023 is accordingly disposed of.**
- 14.** All connected applications, if any, stand disposed of.
- 15.** Interim order, if any, stands vacated.
- 16.** Copy of this order be sent to the learned Trial Court for necessary compliance.
- 17.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)