

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

(1) Mangilal Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.1082/2006

(2) Bihari Lal Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.1083/2006

(3) Udai Ram Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.1084/2006

Against orders dated 10.11.2006 passed by
Judicial Magistrate, Railmagra in Criminal Misc.
Case Nos. 252/06, 253/06 and 254/06.

DATE OF ORDER :: 30th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. S.P.Sharma for petitioners.
Mr. V.R. Mehta, P.P.

BY THE COURT:

These three petitions arise out of the orders
dated 10.11.2006 passed by Judicial Magistrate, Railmagra
in Criminal Misc. Case Nos. 252/06, 253/06 and 254/06
rejecting the applications filed under Sec.451 Cr.P.C.
denying release of the vehicles seized on Supurdgi.

The vehicles of the respective petitioners viz. Truck, trolley and the tractor were seized for the offence under Sec.41 & 42 of the Forest Act on account of transporting wood. The police after seizing the vehicles lodged FIRs against the petitioners. The petitioners moved applications for release and the same having been rejected by the learned Judicial Magistrate, the petitioners have approached this Court by filing the present revision petitions under Sec.397/401 of the Cr.P.C. Since all the petitioners are challenging the orders denying release of vehicles on Supurdgi and pray for release of their vehicles in question, these revisions are being disposed of by this common order.

The contention of the learned counsel for the petitioners is that the learned trial Court has committed serious illegality in refusing to release the custody of the vehicles inasmuch as the vehicles lying at the police station would deteriorate and would not serve any purpose. The learned counsel submits that this Court in various cases where the vehicles were seized under the provisions of the Forest Act, has ordered release of the vehicles on furnishing Supurdginama. It has also been submitted that though the

vehicles have been seized under the provisions of Forest Act but the question is as to whether an offence has been committed or not is the subject matter of decision and till the matters are decided, the vehicles kept at Police Station would definitely of no use by the afflux of time. The learned counsel submits that in the case of Umed Khan Vs. State of Rajasthan (2006 (1) Cr.L.R. (Raj.) 716) imposition of the condition to furnish Bank Guarantee for Supardagi of vehicle by the trial Court's was considered to be not proper by this Court and the same was set aside. It has also been submitted that the trial Court has wrongly applied the provisions of Sec.55 of the Forest Act because Sec.55 of the Act would apply only in those cases where the wood does not belong to the State Govt.

On the other hand, the learned Public Prosecutor has opposed the revision petitions.

The Hon'ble Apex Court, in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat, has observed that it is of no use to keep the seized vehicles at police stations for a long period and it is for the Magistrate

concerned to pass appropriate orders immediately by taking appropriate bond and guarantee as well as securing the return of the vehicles, if required at any point of time.

In the case of Chittar Mal Vs. State of Rajasthan, the contention of the Public Prosecutor that the learned Judicial Magistrate has no powers to release the cylinders on Supurdgi but only the District Magistrate may do so, was repelled and the gas cylinders seized from the possession of the accused were ordered to be delivered on Supardagi in the above case relating to offence under Sec.3/7 of the Essential Commodities Act for the reason that proceedings under Sec.6(C) of the Act were not pending. The Court opined that the provisions of Sec.457 Cr.P.C. were attracted as proceedings before the District Magistrate were not pending and since the applicant had produced documents in relation to the gas cylinders, the denial of Supurdgi thereof by the Addl. Sessions Judge, on the ground that the cylinders were to be got examined by the FSL, was not proper. The Court was further of the opinion that even after delivery of the cylinders on Supardagi the cylinders could be examined by the FSL.

In the case of Data Ram Vs. State of Rajasthan, it has been observed by the Court:

“. . . it is clear that the release of the truck was declined by both the courts below on sole ground that it is one of material evidence and will be required during investigation and because proceedings under Sec.6A of the Essential Commodities Act are yet to be initiated. It is not in dispute that the truck is lying in custody of SHO PS Mania in an open place and chances of its being damaged on account of its exposure to natural effects like sun and rain etc., which is imminent, rather it will diminish its value and also deprive the petitioner of his regular income, which will also add to national loss.

Despite query made by this Court vide order dated 30.05.05 as to whether any application under Sec.6A of the Essential Commodities Act has been moved by the SHO before the competent authority or not, the prosecution has failed to respond the query.

It is a common experience that whenever a vehicle is seized and kept at Police Station, its condition deteriorates day by day, and one day it becomes a scrap even before trial of the case is concluded and thereby it is not only becomes individual loss but also a national loss because if the vehicle is on its wheels then it is used for transportation and earns revenue to the State also and therefore, as far as practical vehicle should not be permitted to be ruined at police station, as has been held by this Court in Chanduram Vs. State (1994 (2)RLR 507)...

I am not satisfied with the justification furnished by courts below in rejecting application filed under Sec.457 Cr.P.C. Consequently, this

petition is allowed. Orders dated 29.04.05 of the CJM and dt. 26.5.05 of the Additional Sessions Judge, Dholpur are hereby set aside. Hence taking into consideration all the facts and circumstances of the case, truck No.MP-05/E/2425 seized in FIR No.98/05 registered PS Mania (Dholpur) for offence U/s. 3/7 of Essential Commodities Act be released on superdginama and delivered to the petitioner. . . ."

In the case of Umed Khan(supra), the authority cited by learned counsel for the petitioners, this Court, while considering a matter for release of vehicle seized under the Forest Act, has observed in Paras 4 & 5 as under:

In the aforesaid case, the question of imposition of the condition of furnishing bank guarantee was considered in the light of the decision of the Supreme Court in State of Karnataka Vs. K. Krishnan, reported in 2000 Cr.L.R. 657 (SC). It was submitted before this Court in that case that identical shrubs and trees grow in the agricultural fields also as in the forests in the State of Rajasthan which is the main source of kitchen fire in the rural Rajasthan. It was, therefore, argued that the faggot wood collected in the fields for kitchen fire should not be misnomered for forest produce.

Since, this Court felt sufficient force in the argument of the counsel for the petitioner in the case of Brij Lal Vs. State of Rajasthan, without going into the question whether the goods being transported in the

seized vehicle was forest produce of tree that being the question to be decided at the trial, it was opined that the impugned condition of furnishing bank guarantee is onerous in the facts and circumstances of the case."

In the case of Nawab Singh Vs. State (2006 (1) Cr.L.R. (Raj.) 428), it has been observed by this Court that the vehicles seized under the provisions of Wild Life (Protection) Act, 1972 was required to be released on executing Supurdginama and there was no necessity for imposing condition for releasing the vehicle on filing the Bank Guarantee.

After having considered the submissions made before me and the various pronouncement made by this Court, I am of the opinion that in the facts and circumstances of the present matters, the applications filed by the petitioners for Supurdgi of their vehicles before the trial Court were required to be accepted and what was required for the trial Court was to release the vehicles in question on Supurdgi imposing proper conditions.

Accordingly, the revisions petitions stand allowed, the orders impugned are set aside and it is directed that the vehicles in question i.e. truck, trolley and tractor shall be released and delivered to the respective petitioners during pendency of investigation, inquiry and trial, on furnishing a personal bond in the sum of Rs.3 lacs and two sound and solvent sureties of Rs.1.5 lac each for the truck, a personal bond in the sum of Rs.1 lac and two sound and solvent sureties of Rs.50,000/- each for the trolley and a personal bond in the sum of Rs.2 lacs and two sound and solvent sureties of Rs.1 lac each for the tractor to the satisfaction of the trial Court and fulfilling following conditions:

- (1)that he shall get three set of coloured cabinet size photographs of the vehicle in question, each set showing (a)number plate; (b) Chassis number; (c) engine number; and (d) total body of the vehicle;
- (2)that he shall not change the colour or alter numbers or tamper with the evidence in any manner;
- (3)that without prior permission of the trial Court, he shall not transfer or alienate the said vehicle during pendency of the trial; and

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(4)that he shall produce the said vehicle before the trial Court and/or competent authority under the provisions of Forest Act as and when ordered.

(SATYA PRAKASH PATHAK)J.

/jpa