

RESERVED

THE HIGH COURT OF MEGHALAYA

CRL REVN NO. 24 of 2003

Smt Aruna Sangma, wife of Shri Ranjan Dutta, Coal India Ltd.,
Dakopgre, West Garo Hills District, Meghalaya.

..... Petitioner/Revisionist

-Versus-

1. State of Meghalaya, represented by the Commissioner & Secretary to the Govt. of Meghalaya, Department of Home and Police, Meghalaya.
2. District Magistrate, West Garo Hills District, Tura, Meghalaya.
3. The Officer In-charge, Tura Police Station, Tura, Meghalaya.
4. ASI Ved Prakash, Lajpat Nagar Police Station, New Delhi.
5. Officer-in-charge, Lajpat Nagar Police Station Delhi.
6. Deputy Commissioner of Police, Delhi.
7. Bajaj Allianz General Insurance Co. Ltd., Delhi.
8. M/s Bhumika Impex, F-35, West Patil Nagar, New Delhi.

..... Respondents

CRL REVN NO. 28 of 2003

Shri Arwish Marak, son of Shri Rikrang Sangma, Rongram, Tura,
West Garo Hills District, Meghalaya.

..... Petitioner/ Revisionist

-Versus-

1. State of Meghalaya, represented by the Commissioner & Secretary to the Govt. of Meghalaya, Department of Home and Police, Meghalaya.
2. District Magistrate, West Garo Hills District, Tura, Meghalaya.
3. The Officer In-charge, Tura Police Station, Tura, Meghalaya.
4. ASI Mahendra Singh, Anand Vihar Police Station, New Delhi.

5. Officer-in-charge, Anand Vihar Police Station Delhi.

6. Deputy Commissioner of Police, Delhi.

..... **Respondents**

CRL REVN NO. 34 of 2003

Smti Pillarson Marak, son of Shri G Momin, Proper Chandmary, Tura, West Garo Hills District, Meghalaya.

..... **Petitioner/ Revisionist**

-Versus-

1. State of Meghalaya, represented by the Commissioner & Secretary to the Govt. of Meghalaya, Department of Home and Police, Meghalaya.

2. District Magistrate, West Garo Hills District, Tura, Meghalaya.

3. The Officer In-charge, Tura Police Station, Tura, Meghalaya.

4. Head Constable KD Singh, Pandavnagar Police Station, New Delhi.

..... **Respondents**

Shri K Paul, Advocate, present for the revisionists

Shri ND Chullai, Sr. GA, present for respondents No. 1 to 3

Shri IC Jha, Advocate, present for Delhi Police (in Crl Revn No. 24 of 2003 and Crl Revn No. 28 of 2003)

Shri A Khan, Advocate, present for Bajaj Allianz General Insurance Co. Ltd. (in Crl Revn No. 24 of 2003).

Shri K Khan, Amicus Curiae, present for M/s Bhumika Impex (in Crl Revn No. 24 of 2003).

Date of hearing 27th November, 2013

Date of Judgment and Order **29th November, 2013.**

JUDGMENT AND ORDER

ORAL: HON'BLE PRAFULLA C. PANT, CHIEF JUSTICE

Heard.

2. All these three criminal revision petitions have arisen out of same crime Tura PS Case No. 18(2) 2003 registered and corresponding to GR Case No. 31 of 2003, relating to of FIR dated 13.02.2003. In all the three criminal revisions, revisionists have challenged release of the vehicles seized in connection with the said Tura PS Case No. 18(2) 2003, in favour of Delhi Police.

3. Heard learned counsel for the parties and perused papers and records.

4. Brief facts in the matter are that Assistant Sub-Inspector Shri SK Mahanta of Tura Police Station lodged an FIR on 22.01.2003 (registered as PS Case No. 12(1) 2003 relating to offences punishable under Section 379/119/411/420/424/120(B) IPC), alleging that a gang of interstate car lifters is operating in the area since early part of 2002 in connivance with District Transport Office, Tura. Vehicle Maruti Zen bearing Registration No. ML-08-

8090 (of which revisionist of Criminal Revision No. 24 of 2003 claims to be the owner), Vehicle Maruti (car) bearing Registration No. ML-08-8902 (of which revisionist of Criminal Revision No. 28/2003 claims to be the owner), and Vehicle Maruti (car) bearing Registration No. ML-08-9255 (of which revisionist of Criminal Revision No. 34 of 2003 claims to be the owner) and some other vehicles were seized by Tura Police in January, 2003. Whereafter, an FIR dated 13.02.2003 was lodged by the District Transport Officer of West Garo Hills, Tura alleging that the registration numbers of the aforesaid vehicles issued from his Office were fake. On said report of District Transport Officer, West Garo Hills, Tura, crime Tura PS Case No. 18(2) 2003 was registered in respect of offences punishable under Section 468/34 IPC. In the said FIR, names of the present petitioners and seven others were mentioned as the persons in whose favour vehicles were (falsely) shown registered.

5. All the three revisionists have pleaded before this Court that the Magistrate concerned of West Garo Hills, Tura released the vehicles illegally to the three Sub-Inspectors of Delhi Police in their interim Zimma

(custody). Revisionist Smti Aruna Sangma has pleaded that the Maruti Zen (ML-08-8090) vehicle which was registered in her name was given by District Magistrate, West Garo Hills, Tura to the custody of Assistant Sub-Inspector Ved Prakash of Lajpat Nagar Police Station, New Delhi vide impugned order dated 20.06.2003. Revisionist Shri Arwish Marak has pleaded that the vehicle Maruti car (ML-08-8902) was released by the District Magistrate, West Garo Hills, Tura to Assistant Sub-Inspector Shri Mahendra Singh of Police Station Anand Vihar, New Delhi on interim zimma vide another impugned order dated 20.06.2003. As far as the vehicle bearing Registration No. ML-08-9255 is concerned, revisionist Smti Pillarson Marak has pleaded that after her vehicle was seized on 23.01.2003 by Assistant Sub-Inspector Shri SK Mahanta which was released by Additional District Magistrate, West Garo Hills, Tura vide order dated 09.06.2003 in the interim zimma (custody) of Head Constable Shri KD Singh of Pandavnagar Police Station, New Delhi vide impugned order dated 21.07.2003. In all the three criminal revisions release orders are challenged on the ground that same were passed against the spirit of Section 451 of CrPC without affording opportunity to the revisionists

who were alleged registered owners of the vehicles. (Before 2013 in Garo Hills (which is tribal area), covered by the Sixth Schedule of the Constitution of India, district judiciary was not separated from the executive).

6. In response to Criminal Revision No. 24 of 2003, Govind Sharma, son of Late RL Sharma, Station House Officer, Amar Colony, New Delhi has stated that Maruti Zen car No. DL-4CQ-1481 was stolen on 02.04.2002 from the road opposite to House No. 63, National Park, Lajpat Nagar-IV, New Delhi. It is further stated by him that on complaint of Shri Gyan Bansal of Station House, an FIR No. 229/02 relating to offences punishable under Section 379 IPC before Lajpat Nagar Police Station was registered. But when the car could not be traced out, final report was submitted on 06.05.2002. However, on 13.06.2003, information was received from West Garo Hills, Tura on which Assistant Sub-Inspector Ved Prakash went to Tura and by moving an application for release of the vehicle, took the same in his zimma from Tura Police Station. It is further stated in the counter affidavit filed on behalf of respondents No. 5 and 6 (Criminal Revision No. 24 of 2003) that after the vehicle was recovered, same was

given to the Insurance Co. with whom said vehicle was actually insured on the date of theft as owner had received the claim from the said company (Bajaj Allianz General Insurance Co. Ltd.). It is further explained in the affidavit that the vehicle was given to Insurance Company under order of Shri Sanjeev Jain, the then Metropolitan Magistrate, Patiala House Court, New Delhi. Lastly, it is stated in the aforesaid counter affidavit that at present the vehicle stands registered in the name of Bhumika Impex F-35, West Patel Nagar, New Delhi.

7. Counter affidavit has been filed on behalf of respondent No. 7 Bajaj Allianz General Insurance Company Ltd. (in Criminal Revision No. 24 of 2003), wherein it has been stated that Maruti Zen car No. BL-4CQ-1481 was stolen from the road opposite to House No. 63, National Park, Lajpat Nagar-IV, New Delhi, on which an FIR No. 229/2002 was registered at Lajpat Nagar Police Station, New Delhi under Section 379 IPC on the complaint of Shri Gyan Bansal of the said house. Corroborating what has been stated in the previous para on behalf of respondent No. 4 in Criminal Revision No. 24 of 2003, it is stated that Assistant Sub-Inspector Shri Ved

Prakash went to Tura after the vehicle was recovered and obtained the release on zimma of said vehicle. It is further stated by respondent No. 7 that later vehicle was released in favour of Bajaj Allianz General Insurance Co. Ltd under order of the Metropolitan Magistrate, New Delhi. It is further stated on behalf of respondent No. 7 that the revisionist has not come with the clean hands, and he cannot claim the vehicle on the basis of fake registration certificate. It is also stated in the said counter affidavit that because the true owner of the vehicle had been indemnified as such there was no illegality in the releasing of the vehicle in favour of the Insurance Company.

8. In Criminal Revision No. 28 of 2003, counter affidavit has been filed by Shri Mahendra Singh (respondent No. 4 of said criminal revision) in which it has been stated that one Pawan Kumar, s/o Shri Bhagwan Dass, r/o A-64, Suraj Mal Vihar, Delhi lodged an FIR No. 19/2002 relating to theft of Maruti car bearing Registration No. DL-7C-B-4420 having Chassis No. 1520709 and Engine No. 21203365 at Police Station Anand Vihar, Delhi. It is further state din counter

affidavit filed in Criminal Revision No. 28 of 2003 that after the said FIR lodged on 21.01.2002 in respect of offence punishable under Section 379 IPC, and the car could not be traced out. A report was submitted to the Metropolitan Magistrate on 13.04.2002. Shri Mahendra Singh has further stated in his counter affidavit that on 27.02.2003, authorized representative of United India Insurance Co. Ltd. Division Office, 604, 6th Floor, Kailash Building, KG Marg, New Delhi informed the Deputy Commissioner of Police, East District, Delhi that recovery of the car has been made by the police of Tura Police Station, West Garo Hills (Meghalaya). Deponent has stated that on this, he obtained permission from ACP, Vivek Vihar, Delhi and proceeded to Tura on 16.06.2003 after he was entrusted with the case on 04.04.2003. It is further stated by Shri Mahendra Singh that the vehicle bearing Registration No. ML-08-9802 was infact the same vehicle which was stolen from Delhi as it has the same chassis number. According to the deponent (Mahendra Singh) he moved an application on 28.06.2003 before the District Magistrate, Tura for release of the vehicle bearing Chassis No. Chassis No. 1520709 and Engine No. 21203365 of which the same was delivered to him. It is

further stated in the counter affidavit that since Gauhati High Court stayed the order passed by the District Magistrate, Tura on 07.07.2003, the vehicle was returned to Tura Police Station. On 09.07.2003, progress was reported to the Additional Chief Metropolitan Magistrate, Karkardooma Courts, Delhi and later a wireless message was received from the Tura Police Station that the vehicle was being again sent back to Delhi. On 19.07.2003, Assistant Sub-Inspector of Police Shri RS Nahar of Tura reached Delhi and moved an application before the Additional Chief Metropolitan Magistrate, Karkardooma Courts, Delhi to get back the vehicle on 22.08.2003. In compliance of the order of the Gauhati High Court, respondent No. 4 in Criminal Revision No. 28 of 2003 has further stated in his counter affidavit that on 16.09.2003, the car was in the custody of Assistant Sub-Inspector Shri RS Nahar of Tura. This deponent has further told that later Supreme Court of India vide its order dated 07.12.2004 passed in Criminal Appeal No. 1440 of 2004 (arising out of SLP (Crl) No. 5199/2003) set aside the (interim) order of the Gauhati High Court.

9. On behalf of the revisionists Shri K Paul, Advocate, referred the cases viz ***Mahamaya Das vs. Sanat Kumar Law, AIR 1968 Calcutta 564, Hardam Singh vs Vidva Sagar, 1974 Crl LJ 1158 (Punjab and Haryana) and Swapan Dam vs Golap Chand Gupta, (1988) 1 GLR 459*** and argued that the vehicle should have been released by the Magistrate to the revisionists who were registered owners of the vehicles.

10. Having gone through the said cases and also the case of ***U Kariyappa vs P Sreekantaiah, 1980 CRL LJ 422 (Karnataka)***, this Court is of the view that no doubt seized vehicle, should normally be released in favour of the registered owner during the pendency of the trial connecting to such vehicle. But this does not mean that the person whose ownership and the registration certificate, in his name, is itself under challenge, it cannot be said that such person is entitled to the release of the vehicle, in his favour, as of right.

11. Learned counsel for revisionists submitted that cancellation of registration certificate in favour of revisionists of (Criminal Revision No. 34 of 2003) has

been cancelled vide order dated 28.02.2007 passed in WP(C)No. 275 of 2003 as such it cannot be said that the registration certificate of the vehicle in her favour is doubtful. Though copy of said order is not annexed with any affidavit, photo copy of the same was shown to this Court at the time of final hearing. Perusal of the order dated passed by the Shillong Bench of Gauhati High Court in WP(C)No. 275 of 2003 shows that while allowing the writ petition in respect of registration certificate Maruti car bearing No. ML-08-9255, it has been clearly observed that the District Transport Officer, West Garo Hills, Tura can initiate fresh proceedings of cancellation of registration in accordance with provisions of Section 55(7) of Motor Vehicles Act.

12. Also attention of this Court is drawn to the order dated 07.12.2004 passed by the Apex Court in Criminal Appeal No. 1440 of 2004 (arising out of SLP (CrI) No. 5911 of 2003) by which order of the Magistrate regarding release of vehicle bearing Registration No. ML-08-8902 in favour of the revisionist Shri Arwish Marak has been restored. Copy of the said order is not annexed with any affidavit but a photo copy was shown to this Court at the

time of arguments. Perusal of the said order shows that by the said order High Court has been directed to reconsider the revision petition and decide the same in accordance with law. As such it cannot be said that the release order passed by the Magistrate in respect of ML-08-8902 has attained finality for the reason that criminal revision has been directed to be decided afresh. It is relevant to mention here that it is the same Criminal Revision No. 28 of 2003 which is being disposed of by this Court after hearing of the concerned parties. The order challenged before the Apex Court was only an interim order passed on 27.06.2003.

13. Shri K Paul, Advocate, referred to the case of ***Smti Basava Kom Dyamogouda Patil vs. State of Mysore, AIR 1977 SC 1749*** and submitted that even if the property is lost or destroyed, the Court has power to award compensation for the same. However, at this stage, the aforesaid case law is of little help to the revisionists for the reason that such compensation can be awarded only at the conclusion of the trial wherein there is clear-cut finding that the accused who was the owner of the vehicle cannot be given back his property due to

the loss or destruction. As far as case, ***Sunderbhai Ambalal Desai vs. State of Gujarat, AIR 2003 SC 638*** is concerned; the same is applicable where the vehicle is unnecessarily kept at the Police Station, instead of releasing in favour of the true owner. In the present case, in the opinion of this Court that at this stage, it cannot be said that the revisionists are the true owners of the three vehicles as such this Court is not inclined to interfere with the impugned orders passed by the then District Magistrate/Addl. District Magistrate, West Garo Hills, Tura, Meghalaya.

14. Accordingly, all three criminal revision petitions are dismissed.

(HON'BLE PC PANT)
CHIEF JUSTICE
29th November, 2013

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