

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT JAMMU**

CRMC No. 42/2009& IA No. 41/2009

Date of order:-30.08.2018

Kuldeep Singh

Vs.

State of J&K and ors.

**Coram:**

**Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge**

**Appearing counsel:**

For the Petitioner(s) : Mr. Rahul Pant, Advocate.

For the Respondents(s) : Mr. F.A. Natnoo, AAG for respondent Nos.1 &  
2.  
Mr. K.S. Johal, Sr. Advocate with  
Mr. S. Karman Singh, Advocate for respondent  
No.3.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

1. Through the medium of instant petition, filed under Section 561-A Cr.P.C, the petitioner seeks quashing of order dated 07<sup>th</sup> March, 2009 passed by the learned Chief Judicial Magistrate, Kathua in an application filed by the respondent No. 3 purportedly under Section 516 Cr. P.C titled, **"Hardeep Kour Vs. State"** for release of vehicle being Truck No. JK08A-5215, seized by the police of Police Station, Kathua **in case FIR No. 15 of 2009 for the commission of offences under Sections 467, 468, 471, 420 and 109 RPC.**
2. The petitioner has challenged the aforesaid order on the ground that he is the registered owner of the truck in question, therefore, it should have been released in his favour. The aforesaid order has not been passed as per law because there are two claimants, seeking the release of the truck, one is the registered owner, i.e., petitioner and the other is respondent No. 3, i.e., Hardeep Kour, who is claiming to have purchased the vehicle

from the registered owner. The respondent No. 3 claims the ownership of truck on the basis of affidavit, sworn by the petitioner, wherein the said truck has been sold in favour of respondent No. 3. The Court below has not even appreciated the fact that the registered owner is only entitled to seek the vehicle, i.e., truck bearing Registration No. JK08A-5215.

3. Learned counsel for the petitioner while arguing the matter has placed reliance upon the judgment of the Hon'ble Supreme Court in case titled "*Rajendra Parsad v state of Bihar*", reported in *2002 Supreme Court Cases (Cri) 1034* as well the judgment of Punjab and Haryana High Court in case titled, "*Naf Singh Vs. Devender Kumar*", reported in *2004 (1) R.C.R. (Criminal) 987*.
4. I have heard rival contentions. I have also gone through the law on the subject.
5. From the bare perusal of the aforesaid impugned order, it is evident that the respondent No. 3, i.e., Hardeep Kour filed an application before the Trial Court, seeking release of vehicle bearing Registration No. JK08A-5215, seized by the Police of Police Station, Kathua in **FIR No. 15 of 2009 for the commission of offences under Sections 467, 468, 471, 420 and 109 RPC**. The report was called, which reveals that on 21<sup>st</sup> January, 2009, police came to know from the reliable sources that one group of persons is involved in inter-state theft of different types of vehicles including trucks and after manufacturing the documents, they used to sell the vehicles to different persons in the State of Jammu and Kashmir. On this, the aforesaid FIR was registered and besides the truck in question, another Truck bearing Registration No. JK02AB-6458 was seized. After verification of the truck, it was found that the truck in question was registered with Registering Authority, Nagaland under Registration No. NL-02D-6867. This Truck was shown as Registration No. JK08A-5215 by way of forging documents. It further appears from the report that this

truck was stolen by one-Nardev Singh, i.e., the husband of respondent No. 3 and as per the record of R.T.O., Kathua, it stands registered in the name of one-Kuldeep Singh alias Kingo S/o Harnam Singh R/o Ward No. 8, Kathua.

6. During the pendency of the application, the said Kuldeep Singh presented another application before the Court below, claiming the possession of the said truck, thereby stating that the husband of the claimant-Hardeep Kour committed theft of the above said vehicle and brought it from Nepal to India and on bringing the said vehicle to India, the said Nardev Singh in connivance with his wife manufactured false documents and got the truck registered in the name of the applicant by practicing fraud. The CPO in the objections has opposed the application inter alia among others on the grounds that the vehicle in question bearing Registration No. JK08A-5215 is involved in heinous and non-bailable offence, which carries punishment upto imprisonment for life.

7. Section 550 of the Code of Criminal Procedure reads as hereunder:-

**“Power of police officer to seize certain property**

**Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.”**

8. From a reading of this Section, it is obvious that a police officer in the course of investigation can seize any property under this section, if such property is alleged to be stolen or suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence which is being investigated. A property which is not the subject matter of suspected commission of offence, which is being investigated cannot be seized. Under this Section of the Code of Criminal Procedure, a police officer can seize such property which is covered by this section of the Cr.P.C and not otherwise.

9. The scheme of Section 516-A to 525 of Cr.P.C deals with the powers of Court in the matter of disposal of property. Under which Section the order is to be passed depends upon the circumstances in which the property was seized or produced. Sections 516-A and 517 deals with cases which have actually come up before the Court in an inquiry or trial; Section 516-A enables the Court to provide for the disposal after the inquiry or trial is over. Section 523 provides for the disposal of property seized by the police by virtue of their own powers (a) under Section 51 by search of an arrested person; or (b) under suspicion of being stolen (Section 54 & 550), or (c) under suspicion of being connected with an offence (Section 165, 166, 550). Reading Section 517 and 523 together, it seems that once property is sent to a Court with a charge sheet, it is removed from the provisions of Section 523 and Section 517 is applicable. Section 517 applies to all properties produced before a court in an enquiry or trial, while Section 523 applies to property not so produced but still in the possession of the police, who seized it. Section 523 applies to property seized by the police where there has been no enquiry or trial, and whether the property has or has not been produced in the Court. Objects of these provision of the Code of Criminal Procedure is that where the property which is the subject matter of an offence is seized by the police, the same should not be retained in the custody of the Court or the police for a long time. If the property remains with the police authorities, they would be deemed to be under an entrustment of such property with the caveat that such property would be restored to the original owner if the necessity of retaining the same ceases. The property so seized could be returned either during an enquiry or trial and especially so if the property is subject of speedy and natural decay. One such way in which the purpose of enactment of these section could be sub-served is to release the property and especially a

vehicle, after prima facie inquiring about the possession and title to the aforesaid vehicle in favor of the best claimant on superdari.

10. Court below has relied in section 516-A J&K Cr. P.C, while releasing the property. Bare perusal of this section and as already discussed above, it is evident that this section is applicable in cases when the inquiry or trial of offence is pending with regard to property seized in any offence regarding which offence is committed. Admittedly in present case, when vehicle was released, no trial was pending. So Magistrate has applied wrong section. Similarly section 517 of Cr.P.C. deals with release of property after conclusion of trial.
11. Correct section for release of property during investigation would be 523 Cr.P.C. It reads as under:-

**“Section 523. Procedure by police upon seizure of property taken under Section 51 or stolen.- (1) The seizure by any police officer of property take under Section 51 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof or if such person cannot be ascertained respecting the custody and production of such property.**

**(2) Procedure where owner of property seized unknown.- If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall. in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.”**

12. Bare perusal of this section, it makes clear that whenever the seizure of property is made by any police officer **under Section 51 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence**, it is to be reported to a Magistrate under the provisions of this Code, and the Magistrate may make such order as he thinks fit respecting the disposal of such property

or the delivery of such property to the person entitled to the possession thereof. If the materials on record indicate that the vehicle belonged to the person applying, the same could be released to him but only after taking proper security that the vehicle would be produced if required at the time of trial.

13. Counsel for petitioner herein has argued that in present case Magistrate, had no option but to release the vehicle in his favour as the registration documents are in his name.
14. But the order impugned reveals that petitioner- Kuldeep Singh (alleged registered owner) has sworn an affidavit duly attested by the District Mobile Magistrate, Kathua on 26<sup>th</sup> May, 2007 that he has sold the truck / vehicle in question to non -applicant-Hardeep Kour for a consideration of Rs.1.00 (Rupees One Lac), which he has received; it is also evident that petitioner has stated in affidavit, which has duly been attested by JMJC Kathua, that he has no objection, in case the vehicle is transferred in the name of the non-applicant-Hardeep Kour. It further appears from the order that documents/transfer-set of the vehicle have also been signed by parties. Court below has also categorically held that all the documents, i.e., R/C, F/C, I/C were in possession of the said -Hardeep Kour. The court below has thus prima facie come to conclusion that respondent-Hardeep Kour was better claimant than petitioner in the present set of circumstances. Magistrate has rightly thus released the Truck in question in favor of respondent -Hardeep Kour on superdnama on interim custody.
15. Further C/D file and I/O was also called. From the perusal of C/D file, it is revealed that vehicle had been kept on superdnama of respondent - Hardeep Kour on 1.8.2009 in compliance to the order of lower Court; the said vehicle is thus in possession of respondent No.3 since 9 years. No useful purpose will be fulfilled in case superdnama is cancelled at this

stage. However, it is a matter of great concern that till today investigation has not been completed. Police to complete the investigation within two months. Let a copy of this order be sent to SSP concerned for compliance.

16. Under such circumstances, I do not find any infirmity in the order of Court below. This petition is thus **dismissed**.

**(Sanjay Kumar Gupta)**  
**Judge**

**Jammu**  
30.08. 2018  
Ram Krishan

