(2005) 10 OHC CK 0017

In the Orissa High Court

Case No : CRLREV No. 678 of 2005

Amit Taunk @ Amit Kishore Taunk APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 457
Penal Code, 1860 (IPC) — Section 34, 380, 414, 454

Citation : (2005) 100 CLT 601 : (2006) CriLJ 932 : (2005) 2 OLR 725

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Advocate : B.H. Mohanty, R.K. Nayak, D.P. Mohanty, T.K. Mohanty, S. Barma and B. Das, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—The Petitioner has approached this Court challenging the order dated 20.9.2005 passed by the learned S.D.J.M., Sadar, Cuttack in G.R. Case No. 1220 of 2005 rejecting an application u/s 457 of the Code of Criminal Procedure for release of the seized cash in his favour.

2. The factual backdrop of the petitioner''s case is that he was working as a Salesman (Gumasta) under M/s Sheth Bhagaban Das Vithal Das and Sons, Nayasarak, Cuttack and Nirmal Sheth is the proprietor of the said Firm. As usual on 5.8.2005 at about 12.30 p.m. he had gone to ICICI Bank, Bajrakabati Road, Cuttack, for depositing a sum of Rs. 25,00,000/- of the firm. While he was standing near the Cash counter of the Bank, some unknown persons snatched away his bag containing the entire amount of cash. The petitioner shouted and chased them. One of the accused persons, namely, Rajendra Giri (accused No. 1) was caught hold of by the local public. The petitioner lodged FIR in Mangalabag Police Station, on the basis of which Mangalabag P.S. Case No. 166 of 2005 was registered under Sections 454, 380 & 34, IPC. Accused Rajendra Giri was arrested and he disclosed the names of other accused persons involved in the

case. On getting information from Accused No. 1 regarding the identity of the other accused persons'', I.I.C., Mangalabag, P.S. contacted the police officials of Manapari Police Station, Tamilnadu. Accordingly a crime case bearing No. 518 of 2005 was registered u/s 414, IPC. The officials of Manapari Police Station arrested the accused persons and seized the stolen amount of Rs. 25,00,000/-. On 15.9.2005 they produced the accused persons as well as the stolen amount of Rs. 25,00,000/- with the seizure list before the Court of the learned S.D.J.M., Sadar, Cuttack. Thereafter learned S.D.J.M. handed over the seized amount to the I.O. of Mangalabag Police Station, Cuttack. The Petitioner (informant), who is said to be the Salesman (Gumasta) of the Firm, filed an application on 17.9.2005 u/s 457, Cr.P.C. to release the seized cash in his favour. Similarly the I.O. also filed an application to release the amount in favour of the informant/petitioner from whose custody it was stolen. The State/Prosecution filed objection to the same. After hearing the Learned Counsel for the respective parties, learned S.D.J.M. by its order dated 20.9.2005 rejected the applications and directed the I.O. to keep the seized cash of Rs. 25,00,000/-in the Bank locker. Hence the present Criminal Revision filed by the petitioner challenging the order dated 20.9.2005 of the learned S.D.J.M., Sadar, Cuttack.

3. The case of the prosecution is that the petitioner is not the real owner of the seized cash. Since the investigation is in progress and the seized amount being to the tune of Rs. 25,00,000/-, the same cannot be released at this stage, in favour of the petitioner, without proper verification of its source and release of the cash at this stage may prejudice the prosecution. Furthermore, the petitioner being an agent of the real owner of the cash, the amount should not be released in his favour. Once the cash is released in favour of the present petitioner, who is only the informant but not the actual owner of the cash, it may create future complications in the matter.

4. In support of his contention, learned Counsel relied upon and cited the decisions in the case of Sunderbhai Ambala Desai v. State of Gujarat reported in CLT (2003) (Supp.) (Crl.) 730 (SC) : (2003) 24 OCR (SC) 444 Yaswant Porwal v. State of Orissa reported in CLT (2004) (Supp.) (Crl.) 495 : (2004) 27 OCR 848 and Shyam Meher and Anr. v. State of Orissa reported in CLT (2005) (Supp.) (Crl.) 886 : (2005) 32 OCR 56 as well as the provisions of Sections 451 & 457, Cr.P.C.

5. Learned Additional Standing Counsel appearing on behalf of the State also relied upon the same decision of the Apex Court as has been relied upon by the learned Counsel for the petitioner i.e. the case of Sunderbhai Ambala Desai v. State of Gujarat (supra), which has also been relied upon by the learned S.D.J.M. while passing the impugned order dated 20.9.2005.

6. The relevant Sections 451 & 457 of the Code of Criminal Procedure, referred to by the learned. Counsel, which deal with custody and disposal of the seized property pending trial in certain cases, read thus :

"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.

457. Procedure by police upon seizure of property :

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an enquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the persons entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) 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 and 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."

7. As such, Section 451 clearly empowers the Court to pass appropriate orders with regard to seized property for its proper custody pending conclusion of the inquiry or trial; to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary; and if the property is subject to speedy and natural decay to dispose of the same. Simultaneously, Section 457, Cr.P.C. empowers the concerned Magistrate to pass such order as he thinks fit respecting disposal of the seized property or the delivery of seized Articles to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property and 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 learned Magistrate thinks fit and if such person is unknown, 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.

8. The Apex Court in the case of Sunderbhai Ambala Desai v. State of Gujarat

(supra), which was relied upon by the learned Counsel for both the parties, specifically observed in paragraphs 11 to 14 as follows :

"11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated u/s 451, Cr.P.C. at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, the seized articles be handed over to the complainant after:

(1) Preparing detailed proper panchanama of such articles;

(2) Taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) After taking proper security.

13. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided u/s 451, Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court u/s 451, Cr.P.C. to impose any other appropriate condition.

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchanama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed over back to the Investigating Officer for further investigation and identification. However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation ad identification. For currency notes, similar procedure can be followed."

Other two decisions of this Court which were relied upon by the learned Counsel for the petitioner in support of his contention, were also passed basing on the principle settled by the Apex Court in the case of Sunderbhai Ambala Desai v. State Gujarat (supra), wherein this Court had also directed to release the seized articles in favour of the petitioner (therein) after observing all the formalities.

9. From the prosecution case itself, it is clear that the informant is the Gumasta/ authorized agent of M/s Sheth Bhagban Das Vithal Das and Sons, who carried the cash for depositing the same in the Bank on behalf of the Firm. As such, the

Firm and/or its proprietor is the actual owner of the seized cash (property), who can only be treated as the source of the cash. In this case, the identity of the owner is known to all parties concerned. The present petitioner, who had filed the petition u/s 457, Cr.P.C., is only an agent/employee of the actual owner, but not the actual owner himself. He had only carried the cash being the authorized agent/Gumasta of the real owner for depositing the same in the Bank on behalf of the owner. The real owner of the seized cash has not yet come forward for release of the same in his favour. Since the actual owner of the seized cash has not yet made any claim, even though his identity is very much known to all the concerned parties, the learned Court by the impugned order has directed the investigating agency to keep the seized cash in the Bank locker until further orders without any delay.

10. I have carefully gone through the entire order dated 20.9.2005 of the learned S.D.J.M., Sadar, Cuttack. As it appears from the order impugned, no illegality or irregularity has been committed by the learned Trial Court in directing the I.O. to keep the seized cash in the Bank locker until further orders keeping in view the fact that, even though the petitioner is the informant who lodged the FIR, on the basis of which the present G.R. case has been initiated and the cash was seized, he is not the real owner of the seized cash since he himself claims to be the salesman (Gumasta) of M/s. Sheth Bhagban Das Vithal Das and Sons, which is the Gold and Jewelry merchants, as well as he only carried the cash to the Bank for depositing the same in the account of the Firm named above. As such, it is only the Firm/its proprietor is the real owner of the amount of cash seized, i.e. Rs. 25,00,000/- and not the informant. Further more, in case, such huge amount of cash is released in favour of the salesman (Gumasta) of the Firm without involving its actual owner, that may create many future complications in the matter.

11. As stated above, the learned Counsel for the petitioner cited three decisions : one is of the Apex Court and the other two are of this Court in support of his contention and in all those three cases either the owner of the seized cash/ ornaments etc. or the owner along with the informant had moved for release of the seized property in their favour. But in the instant case the petition has been filed by the informant/petitioner only, who is not the actual owner of the seized cash, but an employee of the actual owner.

12. Considering the submissions made by the learned Counsel for both the parties and keeping in view the facts and circumstances of the case, I am not inclined to interfere in the matter at this stage. The Criminal Revision is accordingly dismissed as the same is devoid of any merit.

However, in case the real owner of the seized cash comes forward and files an application himself or along with the informant, for release of the seized cash in his favour under the appropriate provisions of law, the learned S.D.J.M. shall do well to consider and dispose of the said application in accordance with law, keeping in view the well settled guidelines laid down by the Apex Court in this regard in its decision in the case of Sunderbhai Ambala Desai v. State of Gujarat (supra) and in case the decision goes in favour of the applicant(s), release the cash in favour of the applicant(s) on proper security/on such terms and conditions as would deem fit and proper in the facts and circumstances of the case as well as taking into consideration the quantum of the seized cash.

