

(2002) 05 CHH CK 0016
In the Chhattisgarh High Court
Case No : M. Cr. No. 1050 of 2002

Bhagwati Shankar Sahu

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 30-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 482
Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2002) 3 CGLJ 357 : (2002) CriLJ 4391 : (2002) 2 MPJR 17

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Bhaskar Pyasi, for the Appellant; Sanjay K. Agarwal, Dy. A.G., for the Respondent

Judgement

Fakhruddin, J.

Shri Bhaskar Pyasi, Advocate, for the petitioner.

Shri Sarijay K. Agarwal, Deputy Advocate General, for the State.

With the consent of the parties the matter is heard finally.

The facts emerged in this petition are to the effect that an accident had taken place and a matador having registration No. M.P. 23-D/9380 was seized for the offence punishable under Sections 279, 337 and 338 of the Indian Penal Code and challan was filed before the concerned Magistrate. Learned trial Magistrate vide order dated 19-10-2000 imposed a condition of furnishing bank guarantee of Rs. 50,000/- for getting the offending vehicle on supurdnama. Feeling aggrieved by the imposition of such condition the applicant preferred a Criminal Revision No. 51/2000 before the Additional Sessions Judge who vide order dated 8-12-2000 confirmed the order dt. 19-10-2000. Thereafter the applicant again moved an application u/s 451 of the Cr. P.C. relying on a decision reported in 2001 (1) MPJR 292 Sivaram Singh v. State of M.P. for review of the order dt. 19-10-2000. Said application has been rejected by the trial Court vide order dt.

16-3-2002. Feeling aggrieved by the order dt. 16-3-2002 the applicant filed Revision Petition No. 8/2002 in the Court of Additional Sessions Judge, who placing reliance on the decision reported in 1999 (2) MPJR 205 N.D. Singhal v. State of M.P. dismissed the revision vide order dt. 22-3-2002 thereby confirmed the order passed by the trial Court.

Being aggrieved by the order .dt. 22-3-2002 the applicant has filed this petition u/s 482 of the Code of Criminal Procedure challenging the validity, propriety and legality of the impugned order.

Learned Counsel for the applicant , pointed out that the seized vehicle is lying since 18-7-2000 in the police station Concerned till date. He also pointed out that the insurance policy was filed before the Court below to show that the vehicle in question was insured. Learned Counsel submitted that the revisional Court brushed aside the judgment in Siyaram's case (supra) on the ground that the criminal case and the claim case are pending and as such whether the vehicle was insured or not cannot be determined at this stage.

In para-3 of N. D. Singhal's case (supra] certain directions were given.

Hon"ble Supreme Court in Siyaram Singh's case (supra) has held that the directions issued in N. D. Singhal's case obviously take away the discretion of the appropriate Court under different provisions of the Code, which cannot be taken away by observation of the High Court, howsoever the directions may be in view of that matter. The decision is quoted below :

This petition is directed against the impugned order of the High Court having refused to exercise its power u/s 482 on being approached because of certain direction of the Court in N.D. Singhal v. State of M.P. 1999 (1) V B. It appears that on a public interest litigation, the Court had issued certain directions in Singhal case as the Court came to the conclusion that in Motor Vehicles Accidents Claims, the claimants are facing a great deal of inconvenience in getting compensation, and as such the direction purports to redress the grievance of the claimants generally. It is contended before us by the learned Counsel for the petitioner that the aforesaid direction takes away the discretion of the appropriate authority under the Code and tantamounts to Legislation by the Court, which the Court does not possess. The learned Counsel for the respondent, on the other hand, contended that such directions have been issued for the benefit of the entire litigants in all such cases, and as such the said direction in Singhal's case should not be interfered with.

Having regard to the facts and circumstances of the case, and going through the directions obviously takes away the discretion of the appropriate Court under different provisions of the Code, which cannot be taken away by observation of the High Court howsoever beneficiary directions may be. In that view of the matter, we observe that the discretion of the appropriate Court under any provision of law is not fettered with the aforesaid directions.

Learned Magistrate so also the learned Sessions Court failed to appreciate the matter in proper perspective. They have adhered to earlier decisions without taking into consideration the judgment of Hon''ble Supreme Court in Siyaram Singh's case.

A perusal of the order impugned goes to show that though in para-4 it has been observed that a document relating to insurance policy has been filed which needs no further enquiry in view of the pendency of the criminal case and claim case but in para-8 learned Court below prima facie come to the conclusion that the vehicle was not insured and it was not advisable to release the vehicle till the applicant gets discharged from the claim.

It appears that the Court below has not properly construed the law laid down in Siyaram Singh's case (supra). The order impugned passed by the Court below has resulted into miscarriage of justice. In the opinion of this Court it is a fit case for exercising the powers conferred u/s 482 of the Code of Criminal Procedure, accordingly the order impugned is set aside. Imposing condition to furnish bank guarantee is -not sustainable and the same is therefore modified to the effect that if the applicant furnishes a solvent security of Rs. 50,000/- the vehicle in question be released forthwith on supurdnama of the applicant subject to the usual conditions that the vehicle shall be produced as and when required by the trial Court concerned and the applicant shall participate personally or through counsel before the Claims Tribunal in case claim has been filed and may raise such defence which are available to him.

With the above direction this petition is disposed of