(2021) 12 OHC CK 0077

In the Orissa High Court

Case No : Criminal Miscellaneous Petition No. 401, 2040, 2163 Of 2021

Nabaratna @ Nabaratan Agrawal APPELLANT

Vs

State Of Odisha RESPONDENT

Date of Decision : 13-12-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 176
Code of Criminal Procedure, 1973 — Section 457, 482
Indian Penal Code, 1860 — Section 279, 304(A)
Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 2018 — Rule 6
Insurance Act, 1938 — Section 64(VB)

Citation : (2021) 12 OHC CK 0077

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : S.K. Nanda, B. Sahoo, A.K. Sahoo, B.K. Nayak, Bigyan Kumar Sharma, S. Palei, S.K. Singh, J. Pradhan, S.K. Mishra

Final Decision : Disposed Of

Judgement

Sashikanta Mishra, J

1. In all these applications, the petitioners challenge the orders passed by the courts below in rejecting their applications filed under Section 457 Cr.P.C. for release of their vehicles.

FACTS

CRLMC No. 2040 of 2021

2. In this case, the petitioner claims to be the registered owner of a Tractor bearing Registration No.OD-31-F-9493 with Trailer bearing Registration No. OD-31-F-9494. The said vehicle was seized in connection with Dunguripali P.S. Case No. 138/2021 corresponding to G.R. Case No. 83/2021 of the Court of learned G.N. -cum-J.M.F.C., Dunguripalli for the alleged commission of offence under Sections 279/304(A) of IPC against one Jitendra Behera, driver of the said

Tractor. During investigation, the said accused expired and the case abated against him and accordingly final report was submitted as such on 05.08.2021. The petitioner being the owner of the vehicle filed an application under Section 457 Cr.P.C. for release of the seized Tractor and Trailer. Learned Magistrate, upon receipt of report from I.O. held that there is no requirement of the vehicle for further investigation and that no confiscation proceeding has been initiated against him. But it was found that the vehicle was not insured as on the date of occurrence. On such finding, learned Magistrate by referring to the decision of this Court rendered in the case of Ramakrushna Mahasuar vs. State of Odisha reported in (2021) 81 OCR 635 held that insurance of the seized vehicle was not valid on the date of accident and it is difficult to ascertain the compensation amount and accordingly rejected the petition. The petitioner thereafter filed revision vide Criminal Revision No. 11 of 2021 in the Court of Sessions Judge, Sonepur. By order dated 20.09.2021, the learned Sessions Judge by referring to Rule 6 of Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 2018 (herein after referred as "2018 Rules") (wrongly mentioned as OMV Rules, 2018) and the decision of this Court in Ramakrushna Mahasuar (supra), held that the petitioner did not furnish any sufficient security to satisfy the compensation to be paid to the claimant, if any, before the trial Court or before passing of the impugned order and therefore, did not deem it proper to interfere with the order passed by the learned G.N. -cum- J.M.F.C., Dunguripalli. The said order is impugned in the present application.

CRLMC No. 1401 of 2021.

3. In this case, the petitioner claims to be the owner of a Truck bearing registration No.OD-23A-7371, which was involved in an accident that occurred on 02.03.2021 leading to registration of Barkote P.S. Case No.65 of 2021 corresponding to C.T. Case No. 113 of 2021 of the Court of learned S.D.J.M., Deogarh for the alleged commission of offence under Sections 279/304-A of IPC. The vehicle was seized by Barkote Police. The Driver of the said Truck was shown as the accused. The petitioner filed an application under Section 457 Cr.P.C. before the learned S.D.J.M., Deogarh for release of the vehicle pending trial of the case. Learned S.D.J.M. vide order dated 11.06.2021 by referring to Rule-6 of the 2018 Rules held that as the vehicle was not insured on the date of the accident, the prayer of the petitioner for release of the vehicle cannot be allowed and accordingly rejected such petition. Being aggrieved, the petitioner carried the matter in revision to the Court of Sessions in Criminal Revision No. 6 of 2021-04/2021 of the court of learned Addl. Sessions Judge, Deogarh. Learned Addl. Sessions Judge also relied upon the aforesaid rules and the decision of this Court in the case of Ramakrushna Mahasuar (supra) and held that no case for exercise of revisional jurisdiction is made out in respect of the impugned order and accordingly dismissed the revision petition. The said order is impugned in the present application.

CRLMC No. 2163 of 2021

4. In this case, the petitioner claims to be the owner of a Tipper bearing registration No. OD-29-H-8181, which was involved in an accident occurring on 28.07.2021. In connection with such accident, Keonjhar Town P.S. Case No. 266/2021 was registered corresponding to G.R. Case No. 1170/2021 for the alleged commission of offence under Section 279 of IPC against the driver of the said Tipper. The petitioner filed an application under Section 457 of Cr.P.C. for release of the vehicle during pendency of the proceeding before learned S.D.J.M., Keonjhar. Learned S.D.J.M. rejected such prayer for release of the vehicle on the ground of non-existence of the insurance policy covering the date of accident following the ratio laid down by this Court in Ramakrushna Mahasuar (supra). Challenging such order, the petitioner filed revision in Criminal Revision No. 07/07 of 2021 in the court of learned Addl. Sessions Judge-cum- Special Judge (Vigilance), Keonjhar. Vide judgment dated 25.09.2021, learned Addl. Sessions Judge-cum- Special Judge (Vigilance) held that the vehicle was not covered under a valid policy of insurance covering the date of the accident and therefore, the vehicle cannot be released in favour of the petitioner. In holding so, the learned Addl. Sessions Judge-cum-Special Judge (Vigilance) relied upon the judgment of this court in Ramakrushna Mahasuar (supra). The said order is impugned in the present application.

5. Heard Mr. S.K. Nanda, learned counsel for the petitioner in CRLMC No, 2040 of 2021; Mr. A.K. Sahoo, learned counsel for the petitioner in CRLMC No. 1401 of 2021; Mr. B.K. Sharma, learned counsel for the petitioner in CRLMC No. 2163 of 2021 and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State in all the cases.

SUBMISSIONS

6. Mr. S.K. Nanda has contended that in his case the provision contained in Rule-6 of the 2018 Rules cannot be enforced because the driver of the Tractor has expired and there is no claim for compensation from any quarter whatsoever.

Mr. A.K. Sahoo contends that two vehicles were admittedly involved in the accident but police submitted charge sheet against one vehicle only and therefore, acceptance of such charge sheet by the learned Magistrate is improper.

Mr. B .K. Sharma has contended that unless the owner of the vehicle is called upon to furnish security for a particular amount, he cannot be expected to do so on his own. It is only if the owner fails to furnish the security as ordered by the court can his application for release of the vehicle be rejected. It is additionally argued by Mr. Sharma that in his case learned Magistrate committed an illegality in holding that the vehicle in question was not covered under policy of insurance even though there were ample materials on record to show that the vehicle was actually under insurance coverage at the relevant time. In this regard Mr. Sharma has referred to the insurance policy enclosed as Annexure-4 to his CRLMC petition. It reveals that the policy was issued on 28.07.2021 at 2.53 p.m. whereas the accident took place at 9 p.m.. The insurance Company however, committed an illegality in mentioning the period of insurance as commencing from 00.00 hours on 29.07.2021 to midnight of 28.07.2022. Referring to Section 64(VB) of the Insurance Act, 1938 Mr. Sharma would argue that premium amount having been duly paid on 28.07.2021, the Insurance Company is duty bound to assume risk from such date and not from any later date. Mr. Sharma has also referred to Rule-4 of the Insurance Regulatory and Development Authority (Manner of Receipt of Premium) Regulations, 2002 (in short "2002 Regulations"), which prescribes that in all cases of risks covered by the policies issued by an insurer, the attachment of risk to an insurer will be in consonance with the terms of section 64-VB of the Act (The Insurance Act).

7. Apart from contending as above, learned counsel for the parties have specifically raised the ground that the courts below have never directed them to furnish any security not quantified such amount and that they are ready and willing to furnish security for such amount as may be fixed by the respective courts and therefore, necessary directions may be issued by this Court.

8. Per contra, Mr. S.K. Mishra, learned Addl. Standing Counsel has supported the impugned orders by contending that Rule-6 of 2018 Rules puts an embargo on release of vehicle involved in an accident-causing death or bodily injury to any person or damage to property if on the date of accident, the vehicle is not covered under a policy of insurance covering 3rd party risks. This Court has already dealt with the matter in Ramakrushna Mahasuar's case, which all the three courts below have followed. Therefore, according to Mr. Mishra, there is no necessity of interference by this court with the impugned orders.

FINDINGS

9. A reference to Rule-6 of 2018 Rules, at the outset would be in order:

"6. Prohibition against release of motor vehicle involved in accident:- (1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule(1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident."

10 A reading of the Rule would reveal that undoubtedly certain restrictions have been placed by the Legislature in the matter of release of a vehicle involved in an accident if the said vehicle is not covered by an Insurance Policy but, it is also evident that an exception has been carved out in the latter part of sub-Rule(1) to the effect that such vehicle can also be released if the registered owner furnishes "sufficient security to the satisfaction of the Court" to pay for compensation that may be awarded in a claim case arising out of such accident.

11. The aforementioned rules came into force on 28.12.2018, i.e., the date on which they were published in the Odisha Gazette. Further, the said rules were framed in exercise of powers conferred by Section 176 of the Motor Vehicles Act, 1988, and in supersession of the Odisha Motor Vehicles (Accident Claims Tribunal) Rules, 1960. The Odisha Motor Vehicles (Accident Claims Tribunal) Rules, 1960 (hereinafter referred to as "Rules, 1960") had 32 provisions, but there was no provision dealing with release of vehicle. For the first time such a provision came into existence in the form of Rule-6 of 2018 Rules. It would be apt to refer to the background of framing such a rule. In the case of Jai Prakash vs. M/s. National Insurance Company and others reported in JT 2009 (15) SC 443, the Apex Court while issuing several directions to different authorities with regard to motor accidents claim cases held as follows:

"28. Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accident Claims Tribunal Rules, 2008 in this behalf."

Subsequently, in the case of Ushadevi & Anr. vs. Pawan Kumar & Others, (Civil Appeal No(s). 9936-9937/2016), decided on 13.09.2018, the Hon'ble Supreme Court while reaffirming the principles laid down in Jai Prakash (supra) have held as follows:

"41. Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accident Claims Tribunal Rules, 2008 in this behalf."

"xxxxxxxxxx. What has been stated in paragraph-41 (quoted in this judgment hereinbefore as paragraph-28 of its judgment in Jai Prakash mentioned supra) is a some kind of solace to the victims. But for the said purpose, proper rules are required to be framed. Xxxxxxxxxxxx"

Referring thereafter to Rule-6 of the Delhi Motor Accidents Claims Tribunal Rules, 2008, the Apex Court directed all States to see that such a rule is introduced if already done, so that the victims upon accident get some compensation.

12. Delhi Motor Accident Claims Tribunal Rules, 2008 was notified in the Delhi Gazette on 13th July 2009. Rule-6 thereof reads as follows:

"6. Prohibition against release of motor vehicle involved in accident.-(1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in subrule (1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident."

Obviously, Rule-6 of 2018 Rules is in pari materia to Rule-6 of the Delhi Motor Accident Claims Tribunal Rules, 2008 quoted above.

13. As already referred to, the Hon'ble Supreme Court Jai Prakash (supra) have held that where there is no insurance cover for vehicle, the owner should be directed to offer security or deposit an amount that may be adequate to satisfy the award that may be ultimately passed xxxxxxxxxxx.

14. A reading of the 2018 Rules would suggest that sufficiency of the security to be furnished by the owner must be to the satisfaction of the Court. In this context, it is contended by Mr. B.K. Sharma that second limb of Sub-Rule (1) of Rule-6 may not be workable because there may not be any claim case or, there may be a claim case resulting in nil award or, there may be a case where negligence of the driver may not be proved and in such a case compensation may not be awarded. Further, under Section 168 of the Motor Vehilces Act, the Claims Tribunal shall specify the amount in the form of compensation which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be. Therefore, which compensation

amount shall be taken into consideration by the learned court below while asking for security from the registered owner for release of the vehicle will be difficult to determine.

Undoubtedly, this is a vexed question having no direct answers. It may be difficult for a criminal Court to have definite knowledge of the amount that would be awarded as compensation in a claim case that may be filed. In this scenario, it needs to be determined as to what would be a correct approach to address this problem viz-a-viz the mandate of Rule-6 of 2018 Rules. As quoted hereinbefore, while sub-rule 1 authorizes the Court to ask for security to pay for the compensation that may be awarded in the claim case, sub-rule 2 authorizes the Court also to sell off the vehicle in public auction on expiry of three months after the vehicle is taken in possession (seized) by the investigating officer and deposit the sale proceeds thereof in the Claims Tribunal having jurisdiction over the area in question. Obviously, sub-rule 2 is a sort of exception to sub-rule 1 to be resorted to in the event of failure of the owner to furnish security as required under sub-rule 1 within three months of the seizure of the vehicle. In such event, it would be lawful for the Court to sell of the vehicle in public auction and deposit the sale proceeds for payment of compensation. So, on a conjoint reading of sub-rules 1 and 2, it would be apparent that the pious intent of the legislature being to safeguard the interest of the victim of a road accident caused by an uninsured vehicle, Rule 6 has ensured that the same remains protected either by asking the owner to furnish sufficient security keeping in view the compensation that may be awarded or by selling off the vehicle and applying the sale proceeds thereof for such purpose.

So, taking a cue from the legislative scheme as ingrained in Rule-6, it would not be unreasonable to hold that if and when the Court is unable to quantify the compensation, it would be proper to ask for security at least equal to the present market value of the vehicle, which can be invoked, if need be at the relevant time to pay compensation that may be awarded in future.

In a case before the High Court of Delhi, i.e. Rajesh Tyagi & Ors. Vs. Jaibir Singh & Ors. (F.A.O. No. 842 of 2003) decided on 8th June, 2009, a similar view was taken wherein it was observed as under:

"xxxxxxx if the vehicle is not insured, the vehicle shall be released on superdari only after the owner furnishes sufficient security to the satisfaction of the Court to pay the compensation or at least equal to the value of the vehicle"

Adopting such a course of action alone can strike a balance between the right of a victim of the accident or his dependants as the case may be, to receive compensation for their loss vis-à-vis the right of the vehicle owner to have his vehicle released.

15. Thus, from the discussion made hereinbefore, it is manifestly clear that the impugned orders rejecting the application for release of vehicle without calling upon the vehicle owners to furnish security as per rules, and/or by giving them

opportunity to do so is contrary to the statutory mandate. Such rejection enures to the benefit of no one as in the process, neither the right of the victim is taken care of nor the right of the owner to use his vehicle is protected. On the contrary, the vehicle would continue to remain idle and thereby be subject to deterioration with each passing day. Having regard to the spirit of the ratio laid down by the Apex Court in the case of Sunderbhai Ambalal Desai vs. State of Gujarat, reported in (2002)10 SCC 283 it would be in the fitness of things for the Court to direct release of the vehicle albeit after complying with the requirements of Rule-6 of the 2018 Rules.

16. From a conspectus of the analysis made above and on reference to the specific language employed in Rule-6, it would be evident that giving effect to the latter part of Sub-Rule-1 of Rule-6 entails the following steps:

(i) The court concerned is to quantify an amount to be furnished as security which, in its opinion would be adequate to cover the compensation that may be awarded in a claim case arising out of such accident. In the event the Court is unable to quantify such security it may call upon the owners to at least furnish security to the extent of the present market value of the vehicle.

(ii) Upon furnishing of such security, the vehicle can be directed to be released by imposing such other conditions as it may deem fit and proper in the facts and circumstances of the case.

17. In all the three cases before this Court, no such direction was issued to the owners of the vehicles (petitioners) to furnish security and yet their applications were rejected on the ground that they had failed to furnish such security.

18. In view of the discussion on the legislative intent made hereinbefore, this Court is constrained to observe that the methodology adopted by the concerned courts amounts to putting the cart before the horse, inasmuch as, without calling upon the petitioners to furnish security it has been held in all the three cases that the petitioners have failed to furnish security for such amount.

19. As regards the directions issued by this Court in Ramakrushna Mahasuar's case, it is to be kept in mind that the above aspects were not raised before the Court. In that case, the correctness of the order passed by the court below in rejecting the prayer for release of vehicle on the ground of absence of insurance policy was raised which was answered by referring to Rule-6 of the 2018 Rules. The cases at hand stand on different footing inasmuch as, all the petitioners herein have specifically contended that they are ready and willing to abide by the provisions of Rule-6 of 2018 Rules by furnishing such security as may be directed by the courts below.

20. Having regard to the discussion made hereinbefore, it is evident that the impugned orders cannot be sustained in the eye of law, thereby warranting interference by this Court.

21. As regards the contentions raised by Mr. Sharma with regard to date and

time of commencement of the insurance policy, it is observed that the same involves interpretation of the provisions of the Insurance Act and 2002 Regulations vis-à-vis the Motor Vehicles Act. Obviously, the criminal court cannot be expected to decide the controversy arising therefrom. It is open to the petitioner to approach the appropriate forum for redressal of his grievance on such score.

22. For the forgoing reasons therefore, this Court holds that the courts below have committed manifest error in not correctly interpreting the provisions of Rule-6 of 2018 Rules and have therefore, committed illegality in rejecting the petitions filed by the owners of the concerned vehicles for release of the said vehicles without first calling upon them to furnish security as per Rule-6 of 2018 Rules. As such, the impugned orders are liable to be quashed.

23. In the result, all the impugned orders are hereby quashed. The concerned courts below are directed to act as per the steps indicated under paragraph-16 of the judgment and pass appropriate order thereupon. It goes without saying that in the event the owners do not furnish sufficient security to the satisfaction of the courts concerned, no order for release of the vehicles shall be passed.

24. With the above observations and directions, the CRLMC applications are disposed of.

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