
(2024) 05 SHI CK 0104
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No.566 Of 2023

Nishant Sareen

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 30-05-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 451

Citation : (2024) 05 SHI CK 0104

Hon'ble Judges : Bipin Chander Negi, J

Bench : Single Bench

Advocate : N.S. Chandel,. Vinod Kumar Gupta, Vivek Sharma, Diwakar Dev Sharma

Final Decision : Allowed

Judgement

Bipin Chander Negi, J

1. The present has been filed seeking following relief:-

"In the light of aforesaid submissions it is therefore respectfully prayed that this petition may kindly be allowed by setting aside the order dated 21-09-2023 passed by Ld. Special Judge, Solan in case No.640-S/4 of 2023 and the currency notes taken into possession by the investigating agency may kindly be released in favour of the petitioner in the interest of justice."

2. Heard learned counsel for the parties and perused the pleadings.

3. A copy of application for release of currency notes is appended along with the present petition as Annexure P-1. A perusal, whereof, categorically reflects that the petitioner admits that the currency notes, in the case at hand, were recovered from his house. The same are lying deposited in the Malkhana.

4. The respondent/State during the pendency of the matter has placed on record the list of inventory prepared qua the currency notes in question. The same contains details of the currency notes. It specifies the denomination and the

serial number of the currency notes.

5. Other than the aforesaid, from perusal of the impugned order and the inventory placed on record, it is evident that the currency notes were put in a parcel. Thereafter the parcel had been sealed and photographs of the sealed parcel has been taken into custody.

6. Three hundred (300) currency notes, in the case at hand are of Rs.2,000/- denomination. Currency notes of Rs.2,000/- have been withdrawn from circulation vide Reserve Bank of India notification dated 19.05.2023. However, vide aforesaid notification dated 19.05.2023, currency notes of Rs.2,000/- denomination were legal till 30.09.2023.

7. Learned counsel appearing on behalf of the petitioner has drawn attention of this Court to the decision of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai vs. C.M. Mudaliar*, AIR 2003 SCC 638. The same lays down parameters for dealing with an application under Section 451 of the Code of Criminal Procedure. Procedure for dealing with currency notes under Section 451 of the Code of Criminal Procedure has been detailed therein. The relevant extract thereof is being reproduced as under:-

"7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in number of matters. In *Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr.*, [1977] 4 SCC 358, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a

Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest. Valuable Articles and Currency Notes.

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 under Section 451 Cr.P.C. at the earliest.

12. For this purposes, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then 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 under Section 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 or 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 under Section 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 SIIIO after preparing proper panchnama 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 and identification. For currency notes, similar procedure can be followed."

8. Since, in the case at hand, the case property is currency notes, therefore, the process as prescribed in the aforesaid judgment needs to be followed in letter and spirit. Before releasing the currency notes to the petitioner, appropriate bond and security be taken from the petitioner. Photographs taken at the time of preparing inventory on 22.09.2023 be attested/countersigned by the petitioner, to whom, the custody is being handed over. In the case at hand, the petitioner would also attest/countersign the inventory dated 22.09.2023 placed on record.

9. Accordingly, the present petition is allowed in the aforesaid terms. Order dated 21-09-2023 passed by Ld. Special Judge, Solan in case No.640-S/4 of 2023, titled Nishant Sareen vs. State of Himachal Pradesh, is quashed and set aside.

Pending miscellaneous application(s), if any, shall also stand disposed of.