

(2021) 08 GUJ CK 0061

In the Gujarat High Court

Case No : R/Special Criminal Application No. 7098 Of 2021

Rajubhai Chhotalal Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code Of Civil Procedure, 1908 — Section 102, 102(1), 102(3), 451

Citation : (2021) 08 GUJ CK 0061

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Jaydeep H Sindhi, Pranav Trivedi

Final Decision : Allowed

Judgement

Gita Gopi, J

1. Rule. Learned APP waives service of notice of rule on behalf of respondent State. With the consent of learned advocates on both the sides, the matter is heard today finally.

2. This petition has been preferred under Articles 226 and 227 of the Constitution of India essentially seeking relief to release the muddamal cash to

the tune of Rs.4,50,000/-, which was seized pursuant to the non- cognizable offence entry dated 20.07.2020, bearing N.C. Case No.64 of 2020

registered with Khokhra Police Station, Ahmedabad City under Section 102 of Code of Criminal procedure, 1973.

3. Referring to the report of the police sub- inspector, Khokhra Police Station, Ahmedabad City, R/SCR.A/7098/2021 ORDER DATED: 25/08/2021

addressed to Additional Chief Metropolitan Magistrate, Court No.13 Gheekanta, Ahmedabad City dated 01.10.2020, Mr. Jaydeep H.Sindhi, learned

advocate for the petitioner submits that, the police has no objection if the said amount of Rs.4,50,000/- seized under the provision of Section 102

Cr.P.C., be handed over to the present petitioner.

3.1. Mr. Sindhi, submits that the petitioner was carrying the money, which was from his own savings and borrowed from the relatives, and he had

gone for purchasing the gold. Mr. Sindhi submits that the complaint being N.C. Case No.64 of 2020 dated 21.07.2020, was registered with Khokhra

Police Station, Ahmedabad City against three accused namely (i) Rajendra @ Raju Avelbhai Patgir (ii) Rajesh Ranabhai Rajaya and (iii) Maldan

Ajubhai Langdiya, who were found in the Hyundai Verna Car No.GJ-11-S-2535 with cash amount of Rs.4,50,000/- at 02:00 Hours between

Jasodanagar Circle to Kedila Bridge Road, and the car and cash amount of Rs.4,50,000/- were seized under Section 102 Cr.P.C. It was, accordingly,

urged that this Court may direct release of the muddamal cash in exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of

India.

3.2 Mr. Sindhi stated that the petitioner approached the Court of Additional Chief Metropolitan Magistrate for release of muddamal cash by preferring

Muddamal Application, which came to be rejected on 07.11.2020. Being aggrieved by the same, the petitioner preferred Criminal Revision Application

No.06 of 2021 before the Additional Session Judge, City Civil & Sessions Court, Ahmedabad, which also came to be rejected vide order dated

03.03.2021 by confirming the order passed by the Additional Chief Metropolitan Magistrate.

4. Heard learned advocates on both the sides and perused the material produced on record. Section 102 Cr.P.C. permits any police officer to 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; and such officer, if subordinate to the officer in-charge of a police station, then he is required to forthwith report the

seizure to the superior officer.

4.1 Sub-section (3) of Section 102 Cr.P.C. provides that every police officer acting under sub-section (1) shall forthwith report the seizure to the

Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody

thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the

further orders of the Court as to the disposal of the same. Thus, the provision makes it clear that if any seizure is made under sub-section (1) of

Section 102 Cr.P.C., then R/SCR.A/7098/2021 ORDER DATED: 25/08/2021 the report has to be made to the Magistrate having jurisdiction

regarding such seizure.

5. Here, in this case, the vehicle and the cash amount of Rs.4,50,000/- was seized. The report of the sub-inspector, Khokhra Police Station,

Ahmedabad City addressed to the Additional Chief Metropolitan Magistrate was in connection to the application moved by the present petitioner for

handing him back the amount so seized under Section 102 Cr.P.C. The report of the police does not suggest that the seizure of car and the amount

seized was reported to the Magistrate concerned. It is mandatory for the police officer to inform immediately to the concerned Magistrate of such

seizures. Sub-section (3) of Section 102 Cr.P.C. has also made provision with regard to those property which could not be conveniently transported to

the Court. The report even does not disclose as to whether the amount of Rs.4,50,000/- was deposited in any Bank Account opened by the concerned

police. The proper custody of the amount is to be reported by the concerned police station. However, since the police has already given the opinion

and have approved and given consent of handing over the cash amount to the present petitioner, the learned Courts below have erred in not handing

over the cash amount to the present petitioners.

6. The attention of the Court was invited to the judgment of the Apex Court in the case of *Sunderbhai Ambalal Desai v. State of Gujarat*, AIR 2003

SC 638, wherein the Apex Court in regard to the valuable articles and currency notes, held that no useful purpose would be served to keep such

articles in police custody for years till the trial is over and in such cases, Magistrate should pass appropriate orders as contemplated under Section 451

of the Cr.P.C., at the earliest.

7. Learned Additional Public Prosecutor appearing for the respondent - State submits that the petitioner has failed to show the source of cash. It was,

however, urged that the powers of this Court under Article 226 of the Constitution to order release of the muddamal cash can be exercised at any

time whenever the Court deems it appropriate, still however it was urged that the present petition may not be entertained.

8. Considering the facts of the case, it would be beneficial to refer to the decision rendered by the Apex Court in *Sunderbhai Ambalal Desai's case*

(supra), the relevant portion of which reads thus;

5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary;

(3) if the property is subject to speedy and natural decay, to dispose of the same.

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. Baswa 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 R/SCR.A/7098/2021

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 R/ SCR.A/7098/2021 ORDER DATED: 25/08/2021 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.

8.1 The Apex Court in case of *Sunderbhai Ambalal Desai* (supra) has expressed its view, directing the procedure for handing over currency notes, which is as under:

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.

9. The power under Section 451 of Cr.P.C. should be exercised expeditiously and judiciously, which clearly R/SCR.A/7098/2021 ORDER DATED: 25/08/2021 empowers the Court to order for proper custody of the articles or property pending conclusion of the trial, as owner of the article would not suffer because of its remaining unused or its misappropriation. The Court or the police would not be required to keep the article in safe custody and if the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial.

10. Considering the factual aspects of the case and the principle rendered in Sunderbhai Ambalal Desai's case (supra), this Court is of the considered opinion that the custody of the cash, if granted in favour of the petitioner, no prejudice is likely to be caused to the prosecution.

11. In the result, the petition is allowed. Both the orders passed by the learned Courts below are quashed and set aside. The authority concerned is directed to release the mudamal Cash of Rs.4,50,000/- of the petitioner on condition of furnishing personal bond of the equivalent amount.

11.1 Before handing over the possession of the cash to the petitioner, necessary photographs shall be taken and detailed panchnama in that regard, if not already drawn, shall be drawn for the purpose of trial.

12. Rule is made absolute. Direct service is permitted. Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. Learned advocate for the petitioner is also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode.