

(2015) 10 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 28321 of 2015

Shyam Lohia and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 452, 457, 458, 459
Penal Code, 1860 (IPC) — Section 326, 341, 361, 395, 506

Citation : (2016) 1 PLJR 556

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Mritunjay Kumar, for the Appellant; Jharkhandi Upadhyay, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Singh, J—By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), the petitioners seek quashing of the order dated 17.10.2014, passed by the learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur, in G.R. Case No. 3280 of 2013/Tr. No. 4687 of 2014, arising out of Goroul P.S. Case No. 256 of 2013 dated 31.07.2013, registered under Section 395 of the Indian Penal Code (for short "IPC"), whereby the Sub-Divisional Judicial Magistrate, Vaishali at Hajipur rejected the application dated 09.10.2014 filed by the petitioner No. 1 for grant of permission to sell the released goods (16 refrigerators), on the ground that refrigerators are material exhibits and in case they are sold, the prosecution would not be able to produce them at the time of adducing evidence.

2. Goroul P.S. Case No. 256 of 2013 was registered on the basis of oral statement of one Vikash Kumar, driver of the truck bearing Registration No. BR-1GA-0635, which was recorded by the Sub-Inspector of Police at 7.30 a.m. on 31.07.2013 in the Goroul police station.

3. In his oral statement, the informant in presence of Khalasi of the truck Shashi

Kumar stated that last night at 1.30 a.m. having loaded 39 refrigerators (190 liters each) of Samsung Company on the truck, he proceeded to deliver the refrigerators at Hathi Chauk, Muzaffarpur. At 03.30 a.m., his truck was stopped by five persons who were on a Bolero vehicle without any number on pistol point near Goroul over-bridge on N.H. 77. They took him and Khalasi on a Belero vehicle and made to sit them below the seat after having tied their hands and legs with towel. One of the miscreants took the truck towards Muzaffarpur. The miscreants administered them injection and subsequently took them towards west. They were left at a lonely place and thereafter they fainted and in the morning after regaining their sense, they came to the police station and on the way to police station informed the truck owner Vijay Kumar Singh from the mobile phone of an auto rickshaw driver. He has further stated that his mobile phone of Samsung Company with two SIM numbers 8294458703 and 9608127306 and Khalasi's Chinese G-9 mobile with Smart SIM number 98636149010 were in the truck which were taken by the miscreants. His purse containing Rs. 5000/- was also taken by them.

4. In course of investigation, the police recovered 16 refrigerators on 11.09.2013, i.e., 14 refrigerators from two shop like rooms taken on rent by Ramesh Sah from Nawal Kishore Roy and 2 refrigerators from the house of Gajendra Jha respectively.

5. Mr. Mritunjay Kumar, learned counsel for the petitioners has contended that the petitioner No. 2 M/s. S.S. Logistics Private Limited (for short "Company") had entered into an agreement for logistics service for warehousing, receipts, storage, transportation, etc. of electronic appliances with Samsung India Electronics Private Limited and in terms of the said agreement was conducting business of electronic appliances (Refrigerators/Fridges) manufactured and marketed by Samsung India Electronics Private Limited and in terms of the logistic agreement the Company had attained ownership over the goods which were put in possession of the Company. He has submitted that the Company is a duly registered Private Company limited by share and is incorporated in accordance with the Companies Act, 1956.

6. Mr. Kumar has further contended that the petitioner No. 1 is one of the Directors of the Company. The petitioner No. 1, having learnt about recovery of 16 refrigerators and its seizure by the police and being authorized by petitioner No. 2, filed an application on 22nd October, 2013 for release of the seized refrigerators which was allowed by the Sub-Divisional Judicial Magistrate Vaishali at Hajipur, vide order dated 28.3.2014, on condition of submission of two indemnity bonds of Rs. 2 Lakh each and two sureties of the same amount and on furnishing the same the seized refrigerators were released in favour of the petitioner No. 1. Subsequently, the petitioner No. 1 being authorized by petitioner No. 2 filed an application on 09.10.2014 for grant of permission to sell the released refrigerators. However, the learned Sub-divisional Judicial Magistrate, vide impugned order dated 17.10.2014, rejected the said application.

7. Mr. Kumar has further contended that 16 refrigerators, in question, being electronic goods are kept in godown and in the modern days of competitive marketing and changes in model and features etc., the refrigerators would become waste and useless and no customer would buy the same because of the same being outdated if permission to sell the released refrigerators is refused. He submits that if the impugned order is allowed to sustain, the same will cause irreparable financial loss to the petitioners.

8. Mr. Kumar has also contended that the impugned order, whereby the learned Sub-Divisional Judicial Magistrate has rejected the prayer of the petitioners for grant of permission to sell the released refrigerators is in clear violation of the principles laid down in Smt. Basava Kom Dyamogouda Patil Vs. State of Mysore and Another, AIR 1977 SC 1749 : (1977) CriLJ 1141 : (1977) 4 SCC 358 , Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat, AIR 2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 , Sunderbhai Ambalal Desai Vs. State of Gujarat and General Insurance Council and Others Vs. State of Andhra Pradesh and Others, (2010) CriLJ 2883 : (2010) 4 SCALE 141 : (2010) 6 SCC 768 : (2010) AIRSCW 2967 : (2010) 3 Supreme 317 in which the Supreme Court has held that the photographs can be used as secondary evidence during trial and it is not necessary to produce the seized property at the time of trial.

9. In support of his submission, Mr. Kumar has also placed reliance on the decisions rendered in K.W. Ganapathy Vs. State of Karnataka, (2002) CriLJ 3867 : (2002) 4 KCCR 2169 , Canara Bank Vs. State of Punjab and Another, (2006) 4 BC 523 : (2006) CriLJ 86 : (2006) 1 RCR(Criminal) 112 , and Sundaram Finance Limited vs. State of Tamil Nadu & Anr. [in CrI.O.P. No. 5278 of 2007 of Madras High Court].

10. On the other hand, learned counsel for the State has submitted that there is no illegality in the order passed by the learned Magistrate. He has submitted that refrigerators, in question, are material exhibits and if they are allowed to be sold, it would be difficult for the prosecution to prove its case during trial.

11. I have considered the submissions of both the parties and perused the materials on record.

12. Chapter XXXIV Cr.P.C. deals with disposal of property. Of them, Sections 451, 452 and 457 are relevant for the purpose of the present case. They read as under:-

"451. Order for custody and disposal of property pending trial in certain cases.-

When any property is produced before any Criminal Court during an 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.

452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

xxx xxx xxx

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 inquiry 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 person 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."

13. A close reading of the provisions of Sections 451 and 452 Cr.P.C. would show that they comprehend both types of cases and property and their disposal. Section 451 Cr.P.C. deals with properties during inquiry or trial, while Section 452 Cr.P.C. deals with properties at the conclusion of the trial and also thereafter. Thus, it would be apparent that Section 451 Cr.P.C. is for the pre-inquiry and pre-trial stage, while Section 452 Cr.P.C. is for post-inquiry and post-trial stage. Section 457 Cr.P.C. would occur in both the stages and it gives power to the Court to pass appropriate order when the properties are not produced before the Court.

14. In *Smt. Basava Kom Dyamogouda Patil vs. State of Mysore and another* (supra), the Supreme Court dealt with a case in which the recovered ornaments kept in a trunk in the police station were found missing and the owner of the property sought indemnification. In the said case, the question arose with regard to payment of those articles. In that background, in para 4 the Supreme Court has 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."

15. The horrifying situation of the case property such as vehicles, machines etc. found lying in police station premises and Court premises and ultimately becoming junk and loosing their value engaged the attention of the Supreme Court in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, AIR 2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 (supra) . In the aforesaid case, gold ornaments and other articles lying at the police station were illegally replaced by the police personnel with spurious articles. After examining the scope of Sections 451 and 457 Cr.P.C., the Supreme Court held that the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. In para 5 and 7, it observed as under:-

"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 thinks necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

xxx xxx xxx

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 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. 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."

16. In the aforementioned case, the Court dealt with various types of valuable articles, such as, vehicles, currency notes, etc. and held that it is of no use to keep such articles in police custody for years till the trial is over. It observed in para 11 as under:-

"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."

17. In the aforesaid case, taking note of the fact that they may be required to be

produced as material exhibits during trial, the Court also indicated an alternative procedure in para 12 to 14 which are reproduced hereunder:-

"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, then seized articles be handed over to the complainant after:-

- (1) preparing detailed proper panchnama 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 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 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 claimants, 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 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."

18. In *Sunderbhai Ambalal Desai Vs. State of Gujarat* (supra) , the Supreme Court has permitted that the endorsement of the accused be taken on the photographs if the accused disputes his involvement in the offence and pleads that no article was found from him. It also clarified that signature of the complainant should also be taken on the photographs of the material object and the same be kept on record to be exhibited at the time of trial. The Court further observed that seizure report is sufficient and there may not be any necessity to produce the vehicle before the Court. The observation made by the Court in this regard in para 2 is reproduced hereunder:-

"2. In our view, no further directions are required to be given in these matters. However, it is made clear that in case where the accused disputes that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph. Further, with regard to the vehicle also, it is made clear that there may not be any necessity of producing the

vehicle before the Court and the seizure report may be sufficient. The special leave petitions are disposed of, accordingly."

19. The provisions prescribed under Sections 451 and 457 Cr.P.C. were once again considered by the Supreme Court in *General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors.* (supra). After taking note of the directions given by the Supreme Court in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, AIR 2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 in *General Insurance Council vs. State of Andhra Pradesh* (supra), the Supreme Court noticed that police, investigating as well as prosecuting agency were not taking adequate steps for compliance of the directions, which has resulted in loss of assets worth several hundred crore and recovered articles were reduced to junk by the time they are released. It gave further directions in this regard. The relevant portion of the judgment in para 13 is as under:-

"13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, AIR 2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

20. In *K.W. Ganapathy vs. State of Karnataka* (supra), the owner of a stolen Zen car sought permission to sell the vehicle to repay the debt to the bank which was rejected by the trial Court against which the owner filed a revision application which was also dismissed by the Sessions Court, whereupon the owner filed an application before the Gujarat High Court. The High Court examined the law

under Section 452 Cr.P.C. and permitted the owner to sell his car. The relevant portion of the said judgment is reproduced hereunder:-

"2. The petitioner is the owner of a Zen car bearing No. KA-12-N-4699. The said car was stolen by the accused. On a complaint the police have registered a case and laid a charge-sheet in C.C. No. 269/2000 on the file of the Prl. JMFC, Virajpet. The prosecution version supports the contention of the petitioner that he is the owner of the car and was the subject matter of theft. The case is pending trial. The interim custody of the car was given to the petitioner under Section 457, Cr.P.C. by the JMFC, on certain conditions. The chief condition being that the petitioner shall keep the car in his custody intact and shall not alienate until the disposal of the case. After taking interim custody, the petitioner made another application before the JMFC submitting that the petitioner has taken finance from the Co-operative Bank while purchasing the car, the interest liability is mounting up and he is unable to make arrangements for repayment of the loan. Therefore, intends to sell the car for repaying the debt liability to the bank. In that connection, sought permission of the Court to permit him to sell the car. The trial Court rejected the request. In Crl. Revision Petition No. 13/2002, the Sessions Judge Kodagu, confirmed the order of the JMFC and rejected the revision. Being aggrieved the present petition is filed.

3. According to the material discussions made in the impugned orders, it appears that there are three accused in the criminal case and accused Nos. 2 and 3 are in judicial custody. Accused No. 1 is absconding. Perhaps the case against accused No. 1 is likely to be split up. Even assuming the case against accused Nos. 2 and 3 is expeditiously concluded, for want of other accused split up charge-sheet would be pending and the petitioner has to suffer the restrictions of the conditional order prohibiting alienation till the disposal of the case. It is not known when the absconding accused is likely to be traced and the trial against him will be concluded. The indefinite and uncertain situation pestering the complainant prompted him to make an application to permit him to alienate the car.

4. After hearing the counsel for the State and the petitioner, I find that the grievance made out by the petitioner is genuine. Of course, in the usual course of routine conditional orders are passed while delivering the property to the interim custody. When the property has any evidentiary value, it is to be kept intact and to ensure its production during the course of evidence for the purpose of marking as a material object the condition of non alienation is imposed. However, when the property has no evidentiary value and only the value of the property is to be properly secured for passing of final order under Section 452, Cr.P.C., the necessity of keeping such properties intact by imposing onerous conditions, prohibiting its alienation or transfer would not be necessary in law.

5. The production of property which has evidentiary value during evidence is a part of a fair trial. With the advanced technology, it is not necessary that the original of the property inevitably has to be preserved for the purpose of

evidence in the changed context of times. The reception of secondary evidence is permitted in law. The techniques of photography and photo copying are far advanced and fully developed. Movable property of any nature can be a subject matter of photography and taking necessary photographs of all the features of the property clearly is not a impossible task in photography and photo copying. Besides, the mahazar could be drawn clearly describing the features and dimensions of the movable properties which are subject matters of criminal trial. Many a time, we find as a routine course, the Courts impose condition of non alienation and to keep the property intact without alteration in any manner. Many a time such conditions act harshly upon rightful owners of the property from exercising their lawful ownership rights.

6. Irrespective of the fact whether the properties have evidentiary value or not it is not necessary that the original of the property has to be kept intact without alienation. As suggested above, the photography or photostat copy of the property can be taken and made a part of the record duly certified by the Magistrate at the time when the interim custody of the property is handed over to the claimant. In the event of the original of the property not produced in the evidence, photograph could be used as secondary evidence during the course of evidence. Ultimately, while passing final orders, it is only the value of the property that becomes a prime concern for the Court. If a person to whom the interim custody is granted, is not entitled to the property or its value and if some other person is held to be entitled to have the property or its value by taking necessary bonds and security from the person to whom interim custody is granted, the value could be recovered and made payable to the person entitled to. The rightful, owners, who have lost the property by an act of crime even after detection and recovery are continued to be prevented from beneficial possession and enjoyment of the same by the archaic conditions imposed as a regular routine despite the changed context of scientific developments.

7. To illustrate, a situation one X loses gold jewellery by theft. The police successfully detect and discover the gold jewellery the same is produced before the Court. Production of gold jewellery and marking of the same in evidence to prove the same as corpus delicti is one of the insistence of law as a part of fair trial. Even after the gold jewellery is given to the custody of X to deprive him by imposing the condition of non alienation from exercise of right ownership for unreasonable length of time would be too harsh and one sided, and a nonchalant approach towards the victims of crime. It may be that X require the gold jewellery for the purpose of the marriage of his daughter or may be that he may require funds for medical treatment or other genuine needs, when he has no alternative source except by sale of the gold jewellery, the condition of non alienation in such situation would be onerous and unreasonable. The production of property during the trial having incriminating value is a insistence to secure the rights of accused as a part of fair trial. At the same time, when there is a possibility of having a secondary evidence of the said property, it is no longer necessary in law to insist that the property to be kept intact without alteration

and non alienation.

8. In order to ensure the recovery of value, it is necessary that the trial Court shall take all necessary diligent steps to get the market value of the property, correctly assessed the photography of the property, properly taken depicting all its features and dimensions and before the property is delivered to the interim custody, the photographs have to be certified by the Magistrate. Further necessary bonds and security to be taken from the person to whom interim custody to be given for the value of the property in order to ensure prompt recovery of value from the person to whom interim custody is given. By following the said safeguards, it is no longer necessary to follow the archaic convention of imposing condition of non alienation. After all the Court while passing a judicial order of interim custody is guided by the investigation material and other prima facie material, which support the claim and title of the person to whom interim custody is given. Having once given the interim custody to the person who is supposed to be the owner of the property, depriving him to effectively use and exercise the lawful ownership rights would be unlawful.

9. In the instant case, the vehicle in question is a car and it has no evidentiary value, it is only required for the purpose of passing final orders under Section 452, Cr.P.C. Therefore, to ensure the recovery of its value, it is suffice only necessary bonds and security is to be taken from the petitioner to recover the value from him in the event of final orders going adverse to him.

10. In view of the reasons and discussions made above, it was not proper on the part of the trial Court and Sessions Court to have rejected the request of the petitioner moreso when he makes out a grievance of accumulating debt liability.

11. The petition is allowed. The petitioner is permitted to sell the car in his own way. But however, before he sells the car, Magistrate should get the market value of the car, as on date to be assessed and necessary bonds with one surety to be taken for the proportionate value of the property assessed and the petitioner shall deposit the value before the trial Court in the event of final orders going against him."

21. In *Canara Bank vs. State of Punjab and Anr.* (supra), the bank had granted loan to the accused to purchase a tractor. The accused purchased the tractor. Later, it was found that he had practiced fraud on the bank. A criminal case was registered and the tractor was seized. The bank was given interim custody of the tractor with a condition that it should not be disposed of. As keeping the tractor would have made it junk, the bank wanted to sell it. Thus, the bank sought permission of the trial Court to sell the tractor. However, the prayer was refused. The bank filed an application before the Punjab and Haryana High Court. After hearing the parties, the High Court permitted the bank to sell the tractor. It is pertinent to extract and reproduce the arguments made before the High Court and the reasons upon which the High Court granted permission to sell the tractor. They are as under:-

"5. Counsel for the petitioner contends that even though the tractor is case property, it was released, to the petitioner, vide order dated 5-2-2004, subject to conditions one being: that it would not be disposed of without prior permission of the Court; the Court was required to consider the feasibility of granting permission to sell. The application and the revision have been dismissed on the short ground that the tractor is case property, and required to be produced on each and every date of hearing. The Courts have ignored the provisions of S. 451 of the Cr.P.C. and have proceeded to decide the application, as if case property cannot be sold in any eventuality. Section 451 of the Cr.P.C. envisages sale of case property and does not confine the powers of a Court, regarding sale of property only to goods subject to speedy and natural decay. It empowers the Court to dispose of case property, not subject to speedy and natural decay, provided the Court records a finding that it is expedient to do so. It is further contended that a tractor, may not be a perishable item but being a machine is subject to natural decay. It comprises of rubber and mechanical parts which if not used, served, repaired and replaced regularly, would turn the tractor into junk, thus causing loss to the Bank and also to accused. The tractor is of no use to the Bank. If sale is permitted, it would enable the bank to recover a part of the loan advanced and would also reduce the accused's (respondent No. 2) civil liability. It is further contended that the bank is ready to deposit the sale proceeds before the trial Court, release whereof would be subject, to the such orders as the trial Court may pass.

6. Counsel for the State of Punjab, on the other hand, contends that the orders passed by the learned Courts below are legal and valid. Case property cannot be ordered to be sold as it is a substantial piece of evidence, relating to the commission of an offence. Its sale would prevent the prosecution from producing the tractor before the Court at the time of adducing evidence. Even otherwise, the provisions of Section 451 of the Cr.P.C. relate to perishable goods, subject to decay and a tractor not being perishable the Courts below rightly declined permission to sell the tractor.

7. I have heard the learned counsel for the parties and perused the record. Section 451 of the Cr.P.C. reads as under:-

"Section 451. Order for custody and disposal of property pending trial in certain cases.-When any property is produced before any Criminal Court during an 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."

8. When any property is produced before a Criminal Court, during any inquiry or trial and in case a prayer is made for sale thereof, the Court is empowered to, if the property "..... is subject to speedy and natural decay or if it is otherwise expedient so to do, " order its sale or disposal. For this purpose, the

Court may if it deems appropriate record such evidence as it thinks necessary. The words or it is otherwise expedient so to do so succeeding the words "speedy and natural decay" are not to be read ejusdem generis to the words "speedy and natural decay." The use of the word expedient confers discretion upon a Court to order sale of case property other than property subject to speedy and natural decay, provided the Court records a finding that it is expedient to do so subject to such terms and conditions as the Court may deem appropriate. This power is to be exercised judiciously and depending upon the facts and circumstances of each case.

9. Invariably, property brought before a Court during the course of an inquiry or a trial would be case property and therefore, to decline permission to sell on the sole ground, that the property is case property would be a negation of the provisions of Section 451 of the Cr.P.C. The property being case property, is no doubt a relevant consideration but except where facts and circumstances of a case so warrant cannot be a sole circumstance, to decline permission to sell. Each case must be decided on its own peculiar facts and circumstances.

10. Applying the aforementioned principles of law, as contained in Section 451 of the Cr.P.C. to the facts and circumstances of the present case, I am of the considered view that the application for permission to sell the tractor could not have been declined on the sole ground and that it was case property.

11. A tractor is an automobile consisting of mechanical and rubber parts, which by their nature are subject to natural decay. Though the tractor has been released to the bank vide order of the Judicial Magistrate Ist Class dated 5-2-2004, it is of no use to the Bank and is lying idle. It would soon be reduced to junk. The sale of the tractor, would benefit both the bank and the accused. The bank would be able to recover a part of the loan advanced and the civil liability of the accused would stand correspondingly reduced. In my considered opinion, in the facts and circumstances of the present case, even though the tractor is a case property expediency of the situation demands that the bank be permitted to sell the tractor subject to certain terms and conditions."

22. In Sundaram Finance Limited vs. State of Tamil Nadu & Anr. (supra), the police had seized Chevrolet Tavera car involved in offences under Sections 341, 361, 326 and 506 IPC. The said vehicle was purchased by the borrower of finance from a financier. With the consent of borrower, the interim custody of the vehicle was given to the financier. The financier was also directed not to alter or change or sell the vehicle. Later, the vehicle caught fire. The front portion of the car was damaged. As the cost of the repair was very high, the financier sought permission of the Court to sell and apply the sale proceeds towards the loan amount, which was rejected on the ground that the vehicle was necessary for identification during trial. The financier challenged the order before the Madras High Court and explained the need to sell the vehicle. The prosecution explained the need to keep it to mark it as material exhibit during trial. The Madras High Court following the judgment of the Supreme Court in Sunderbhai Ambalal Desai

and C.M. Mudaliar Vs. State of Gujarat, AIR 2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 (supra) in para 11 to 14 held as under:-

"11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon"ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

12. This court expresses a sincere hope that at least hereinafter the criminal courts would follow the decision of the Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, in true letter and spirit.

13. These Criminal Original Petitions are allowed. The concerned Lower Court shall, upon production of the certified copy of this order, fix a date for production of the vehicle before it. Upon production, the lower court shall cause photographs of the vehicle to be taken and record Panchnama thereof. The petitioner shall then be at liberty to effect sale of the vehicle. The photographs and Panchnama prepared shall be read as evidence in lieu of marking of the vehicles.

14. The Registry is directed to circulate a copy of this order to all Sessions/Metropolitan/Judicial Magistrate courts...."

23. Coming back to the facts of the present case, it would be evident that in the FIR registered under Section 395 IPC, it is alleged that refrigerators belonging to the petitioner Company were being taken to a particular destination on a truck. The miscreants looted the truck and the articles kept over it. Though 39 refrigerators were looted, only 16 of them could be recovered. The learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur, vide order dated 28.03.2014, gave interim custody of the refrigerators, in question, to the petitioners on furnishing indemnity bond and security as directed by the Court. Subsequently, when the petitioners sought permission to sell them on the ground that due to changes in model and features the refrigerators would become obsolete in market because of emergence of improved version of refrigerators, the learned Sub-Divisional Magistrate rejected the application.

24. Be it noted here that the Company is the owner of the refrigerators has not been denied by anybody. The accused persons from whose possession the refrigerators have been recovered, have also not claimed the refrigerators in question. The Company wants to sell the refrigerators in its financial interest. It is important to note here that the decisions of the Supreme Court and the different High Courts as discussed hereinabove make it clear that Section 451 Cr.P.C. mandates that 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. It is expedient in the interest of justice to protect the interest of the property owner.

25. In my opinion, while considering the application dated 09.10.2014, the learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur was bound to follow the statutory provisions contained in Chapter XXXIV Cr.P.C. and the principles laid down by the Supreme Court in Smt. Basava Kom Dyamogouda Patil vs. State of Mysore and another (supra), Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat, AIR 2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 (supra) , Sunderbhai Ambalal Desai Vs. State of Gujarat (supra) , and General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors. (supra). The non-compliance of the directions of the Supreme Court in the aforesaid decisions is not permissible. If the Subordinate Court fails to follow the directions of the Supreme Court or the High Court, it shall create confusion in administrative of justice and undermine the majesty of law.

26. Learned counsel for the petitioners has rightly contended that in case the refrigerators are kept idle in the godown of the Company, they shall become waste and useless and no customer would like to buy them because of the same being obsolete. In my opinion, the learned Sub-Divisional Magistrate ought to have permitted the petitioners to sell the refrigerators.

27. Keeping in mind the discussions made hereinabove and law laid down by the Supreme Court and the High Courts in the decisions noted above, the impugned order dated 17.10.2014 passed by the learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur cannot be sustained. Accordingly, it is set aside.

28. At this stage, learned counsel for the petitioners points out that the offence under Section 395 IPC being triable by Court of Sessions, the case has been committed to the Court of Sessions for trial and presently it is pending before the learned Additional Sessions Judge, IV, Vaishali at Hajipur. In that view of the matter, the concerned Additional Sessions Judge is directed to fix a date for production of refrigerators in question upon receipt of a copy of this order. Upon production of refrigerators, the Court concerned shall cause photographs of the refrigerators to be taken and record panchnama thereof. Thereafter, the learned trial Judge shall grant permission to the petitioners to sell the refrigerators. The photographs and panchnama prepared shall be read as evidence in lieu of producing the refrigerators as material exhibits.

29. With the aforesaid direction and observation, the application is allowed.