

IN THE COURT OF THE SESSIONS JUDGE ::::::::::: DHUBRI

Criminal Revision No.20/2016

Revisionists : 1. Md. Amjad Ali & 4 (four) others.

- Vs -

Opp. Party State of Assam
Represented by P.P., Dhubri

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri Mobinur Rahman, Advocate for revisionists.
Sri M. Zaman, Ld. P.P, Dhubri for State of Assam.

Date of Hearing : 11-07-2016
Date of Final Order : 25-07-2016

ORDER/ J U D G M E N T

This revision u/s.397 of Cr.P.C preferred against the order passed by learned Judicial Magistrate, 1st Class, Hatsingimari on 16-02-2016 in GR No.4870/2015 arising out of Sukchar P.S. Case No.138/2015 by Amzad Ali, Jahirud Islam, Sagar Ali, Mohar Ali and Sahjamal Ali.

2. The revision is admitted for hearing. The LCR was called for and the Notice was issued to the respondent.

3. This revision had been preferred primarily on the ground that on 17-10-2015 petitioner No.1, Amjad Ali was carrying cattle on a boat belonging to petitioner No.5, Sahjamal Ali. Petitioners No.2 to 4 accompanied him. All of a sudden they had been intercepted by 17 Bn. BSF personnel and prevented them from proceeding further. Thereafter, BSF personnel had lodged the FIR at Sukchar P.S. registered as Sukchar P.S. Case No.138/2015 u/s.379/411/34 of IPC R/W Sec. 98 of Illegal Cattle Transportation Act and seized 47 numbers of purchased cattle of petitioner No.1, Amzad Ali, EFC Boats, Mobile handsets and Indian currency notes of Rs.9,400/- from Amzad Ali, Rs.2,300/- from the

petitioner Sahjamal Ali, Rs.20,000/- from the petitioner Jahidur Islam, Rs.60,084/- from the petitioner Sofur Ali and Rs.18,620 from the petitioner Mohar Ali had been seized and all of them were arrested and forwarded to judicial custody. Later on petitioner had been released on bail and the interim custody of seized boats, cattle and mobile handsets were handed over to the petitioners by learned Addl. CJM, Dhubri. In the meantime, the case was transferred to the newly established SDJM court Hatsingimari and the petitioners had filed a fresh petition praying for custody of seized cash. But by order dated 16-02-2016 learned Judicial Magistrate 1st Class had rejected the prayer on the ground that seized Indian currency notes are required to be exhibited in evidence as the case is charge sheeted and the question with regard to handing over of the custody of seized cash to be decided after the trial.

4. Now whether the order of the learned Judicial Magistrate 1st Class, Hatsingimari is interlocutory order for the purpose of Section 397 (2) of Cr.P.C. Whether there is specific bar as per law in handing over those seized currency notes to petitioners.

5. It is envisaged in Section 451 of Cr.PC that when any property is produced before any Criminal Court during any 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.

6. The position of law relating to Sec. 451 of Cr.PC has elaborately been discussed in the decision of Supreme Court as reported in AIR 2003 SC 638. In the said decision elaborate guidelines had been framed with regard to giving interim custody of the seized valuable article and currency notes in the light of provision under Sec. 451 of Cr.P.C.

In Para-5 of the said decision it was held that [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.

It was held in Para -7 as such "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."

In para -14 it was held as such ".....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."

7. Now the ratio laid down by the Apex Court in the above decision for the purpose of Section 451 of Cr.P.C. clearly indicates that there is no specific bar with regard to giving interim custody of seized currency notes.

8. Thus in view of the above discussion, it is clear that the Court is not debarred from giving interim custody of seized currency notes to its rightful claimants pending trial of the Court and as such by passing the order the learned Court of Judicial Magistrate 1st Class, Hatsingimari had not exercised its discretion in the true spirit of Sec.451 of Cr.PC, rejecting the prayer for custody of the seized currency notes in order that same could be exhibited in evidence in the trial when there is a prayer for custody of those currency notes. The ratio in the above decision of Supreme Court also supports handing over of the custody of seized valuable articles and currency notes requiring proper panchanama to be prepared before handing over possession of article, 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.

9. Thus in the light of the discussion above, the order of the Judicial Magistrate 1st Class, Hatsingimari above is set aside and the revision is allowed. The revision petitioners are directed to file a fresh petition before the learned Court claiming interim custody of the seized currency notes. In that case learned Judicial Magistrate 1st Class, Hatsingimari will hand over the seized currency notes to the claimants after obtaining a bond to that effect

10. Thus summing up the entire discussion above, the revision is allowed. Send back the L.C.R. along with the copy of the order to the Id. Judicial Magistrate 1st Class, Hatsingimari.

Given under my hand and seal of this Court on this 25th day of July, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri