

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 16th July'14.

Crl. Revision No. 10 of 2014.

[Arising out of the order dated 06.02.2014 passed by the learned S.D.J.M., Bhubaneswar in Crl. Misc. Case No.340 of 2013, corresponding to C.T. Case No.2173 of 2013.]

Pilaski Kumar Swain, aged about 39 years, S/o. Nirod Kumar Swain, At – Banasara, P.O. - Gobardhanpur, P.S. - Manijanga, Dist. - Jagatsinghpur, at present residing at Ambedkar Apartment, Suryanagar, Unit-6, Bhubaneswar, Dist. - Khurda.

... **Petitioner.**

- V e r s u s -

State of Orissa.

... **Opp. Party.**

Counsel :

For Petitioner -- Shri A.K. Mohapatra & Associates.

For O.P. -- Special P.P., Crime Branch.

Date of argument : 08.07.2014.

Date of order : 16.07.2014.

O R D E R

This revision is directed against the order dated 06.02.2014 passed by the learned S.D.J.M., Bhubaneswar in Crl. Misc. Case No.340 of 2013, arising out of C.T. Case No.2173 of 2013, rejecting the petition filed by the petitioner under section

457 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) to release the seized vehicle in his favour.

2. Factual matrix leading to the case of the petitioner is that he is the recorded owner of a Mercedes car bearing registration No.OR-02-AZ-1111. He purchased the same from one Subhransu Sekhar Lenka in February, 2013 and his (petitioner's) name was registered in March, 2013. Registration certificate also lies in favour of the petitioner. An FIR in Bhubaneswar P.S. Case No.19 of 2013, corresponding to C.T. Case No.2173 of 2013 of the Court of S.D.J.M., Bhubaneswar, was registered on 06.06.2013 against C.C. Sibaji and others, wherein Subhransu is also an accused, who sold the above vehicle to the petitioner. In such case, the Deputy Superintendent of Police, Economic Offence Wing of Crime Branch, seized the said vehicle from the apartment of the petitioner on 10.06.2013 at 6.15 P.M. After making representation to the authorities, the petitioner filed W.P.(Crl.) No.831 of 2013 before the Hon'ble High Court and the Hon'ble Court were pleased to pass order on 17.12.2013 to move the learned S.D.J.M., Bhubaneswar under section 457 of the Code. Accordingly, the petitioner filed the petition before the learned S.D.J.M., Bhubaneswar; but the learned S.D.J.M. without considering the ownership of the petitioner over the vehicle rejected the petition. Such order is assailed in this revision on the grounds that the learned S.D.J.M. has erred in law by not appreciating the facts of the case; the order is bad in law as the petitioner is the registered owner of the

vehicle; and the fact of damage to be caused to the vehicle being uncared for is not taken into consideration. Hence the revision.

3. Learned counsel appearing for the petitioner submitted that the cardinal principle under section 457 of the Code is to dispose of the property seized after considering its ownership. He submitted that the petitioner approached the Court below to release the seized property in his favour he being its registered owner. The learned S.D.J.M. should have considered the said fact and released the vehicle in his favour. It was his further submission that the learned S.D.J.M. has failed to exercise his jurisdiction by not releasing the seized vehicle in favour of the petitioner. He prayed to set aside the order of the learned S.D.J.M. and release the vehicle in favour of the petitioner with any conditions as deemed fit and proper.

4. Learned Special P.P. appearing on behalf of the Crime Branch of the State of Odisha submitted that the vehicle cannot be released in favour of the petitioner as the same is the subject matter of the offence under sections 420/406/467/468/471/120(B), IPC read with sections 4, 5 & 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and section 6 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011. According to him, the vehicle in question has already been reported by the Crime Branch to the Competent Authority for its attachment under the provisions of the Odisha Protection of Interests of

Depositors (in Financial Establishments) Act, 2011 (hereinafter called “the Act”) and the Designated Court is the Competent Authority to dispose of such vehicle, as enshrined under the Act. Further, he submitted, inter alia, that the learned Court below has no jurisdiction to dispose of the case under section 457 of the Code even if the vehicle stands in favour of the petitioner. Thus, he prayed to dismiss the revision petition.

5. Perused the petition, copies of the registered documents, police papers, other materials on record and the lower Court record. It reveals from the order of the Hon'ble High Court in W.P.(Crl.) No.831 of 2013 that the petitioner has withdrawn the writ application and the Hon'ble Court have been pleased to direct the learned S.D.J.M., Bhubaneswar for expeditious disposal of the application under section 457 of the Code, if filed by him. Consequent upon filing of such application by the petitioner, the learned S.D.J.M. refused to release the vehicle on the ground that the same has been purchased by the petitioner from Subhransu Sekhar Lenka, who is one of the accused in the case, arising out of which the present Criminal Misc. Case was filed in the Court below, for the reason that said Subhransu being the Head of Astha International Ltd. has cheated the general public with false promise of high rate of returns and, out of the hard-earned money of the general public, the car in question has been purchased and to avoid its seizure, the same has been sold to the petitioner.

6. On going through the record in C.T. 2173 of 2013,

out of which C.M.C. No.340 of 2013 under section 457 of the Code arises before the learned S.D.J.M., Bhubaneswar, it appears that accused Subhransu Sekhar Lenka being arrested by the Deputy Superintendent of Police, Economic Offence Wing, Bhubaneswar was forwarded to the Court for the offences punishable under sections 420/406/467/468/471/120-B, IPC read with sections 4, 5 & 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. The seizure list shows that the vehicle in question was seized on 10.06.2013 at 6.15 P.M. from the parking place of Ambedkar Enclave, Block-A, Surya Nagar, Bhubaneswar being involved in this case. It is further found from the circumstances of seizure that the vehicle belongs to accused Subhransu Sekhar Lenka, which was kept in the parking place of Ambedkar Enclave and nobody claimed the vehicle at the time of seizure. Copy of Registration Certificate of the concerned vehicle shows that on 10.06.2009, the vehicle was registered in favour of the present petitioner being purchased from accused Subhransu Sekhar Lenka, as submitted by learned counsel for the petitioner. Copies of charge-sheet and other police papers submitted by learned counsel for the petitioner indicate that in the present case, charge-sheet has been submitted under sections 420/406/467/468/471/120(B), IPC read with sections 4, 5 & 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and section 6 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011. It appears from copies of police papers that Subhransu Sekhar Lenka is

also an accused in such case and the vehicle in question has been seized in connection with this case.

7. Learned Special P.P. does not dispute said papers. On the other hand, he filed copy of the letter of Addl. Director General of Police, Crime Branch addressed to the Addl. Chief Secretary, Finance Department of the State Government for ad interim order of attachment of the properties seized in this case and this particular vehicle of accused Subhransu Sekhar Lenka has been figured in the list of properties submitted by the Crime Branch to the Finance Department. He also filed copy of the Notification showing the list of Designated Courts to try the cases arising out of the Act.

8. From the above submission, first it has to be decided whether the jurisdiction lies with the learned S.D.J.M., Bhubaneswar to dispose of the seized property even if the petitioner is the registered owner of the vehicle seized in this case. For this, the concerned provisions of the Act can be gone through. On perusal of the provisions of the Act, it appears that attachment of properties will be reported to the State Government and the State Government under section 4 will inform the concerned Competent Authority, who is either a District Magistrate or an Additional District Magistrate of the concerned area and then the Competent Authority shall place the matter before the Designated Court constituted under section 8 of the Act. Under section 9, the Designated Court has got the power for disposal of the properties attached and to try the offences

under the Act so also the allied offences under other sections of law. Not only this, but also copy of the Notification dated 10.10.2013 shows that for this area, First Additional District and Sessions Judge, Cuttack is a Designated Court.

9. Now, advertent to the facts of this case, it appears that the Crime Branch has already placed the matter to the Additional Chief Secretary of the Finance Department of the State Government under section 3 of the Act on 12.04.2014 for attachment of the properties, including the present seized vehicle, which have been allegedly procured either in the name of the accused-Company or any other names out of the deposits collected by the accused-Company and the accused Director, namely, Subhransu Sekhar Lenka. Once the process under the Act has been started, any claim that is required to be disposed of over the seized properties shall be in the Designated Court. It is well settled law that when a forum has already been prescribed by a Special Act for disposal of property, the jurisdiction under section 457 of the Code seems to be ousted by the learned S.D.J.M., Bhubaneswar to dispose of such property. In the instant case, even if the petitioner claims to be the owner of the seized vehicle being registered in his favour, he can move the Designated Court for disposal of the same. Another question that arises in this case is when the property is subject to damage, can the learned Court below remain silent. It was submitted by learned Special P.P. that the seized vehicle has been kept with proper care and in a closed building. When the investigating

agency has a bounden duty to take care of the seized vehicle, the apprehension raised that the same is left without care does not arise.

10. When the jurisdiction of the concerned Court has been ousted by the Special Act, in my considered opinion, the petition under section 457 of the Code is not maintainable before the learned S.D.J.M., Bhubaneswar. Of course, the learned S.D.J.M. has not gone through such aspect. Be that as it may, the order of the learned S.D.J.M. by not releasing the vehicle in favour of the petitioner otherwise cannot be interfered with on the ground of non-maintainability of the petition filed before him. Hence ordered :

O R D E R

The Criminal Revision bears no merit and, accordingly, the same stands dismissed without cost.

**Sessions Judge, Khurda
at Bhubaneswar.**

16.07.2014.

Dictated, corrected by me and pronounced in the open Court this day the 16th July, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

16.07.2014.