

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

Present:

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

Dated, Bhubaneswar the 1st Sept. '14.

Crl. Revision No. 32 of 2014.

[Arising out of the order dated 12.05.2014 passed by the learned S.D.J.M., Bhubaneswar in Crl. Misc. Case No.122 of 2014, corresponding to C.T. Case No. 1188 of 2014.]

Ganeswar Swain @ Sahoo, aged about 38 years, S/o. Golakha Swain @ Sahoo, Vill. - Chakeisiani (Purusottam Basti), P.O./P.S. - Mancheswar, Bhubaneswar, Dist. - Khordha.

... **Petitioner.**

-V e r s u s-

State.
Party.

... **Opp.**

Counsel :

For Petitioner -- Shri P. Karan & Associates.

For Opp. Party -- Shri B.B. Mohanty (P.P. in charge).

Date of argument : 12.08.2014.

Date of order : 01.09.2014.

O R D E R

This revision is directed against the order dated 12.05.2014 passed by the learned S.D.J.M., Bhubaneswar in

CrI. Misc. Case No.122 of 2014, arising out of C.T. Case No. 1188 of 2014, refusing to release the seized auto rickshaw in favour of the petitioner under section 457, Cr. P.C.

2. The brief story of the case of the petitioner is that he is the bonafide owner of one auto rickshaw bearing registration No. OR-02BY-9348 vide Chassis No.MD2A26AZOCWC03452 & Engine No.BAZWCC03225, Model of the year 2012. The said auto rickshaw was being driven by the petitioner. On 30.03.2014 at about 8 A.M., after dropping children in their school, while the petitioner was returning, on the way at new Puri Road near Saptasati temple on N.H. No.5, some passengers stopped the vehicle and asked him to drop them in some other place. These passengers also had with them two numbers of cartoons without the knowledge of the petitioner. On getting reliable information, police rushed to the spot and immediately seized the vehicle and the said two cartoons. In the meantime, the passengers fled away. Then, the petitioner came to know that those cartoons contain Aska-40 liquor bottles. Police seized the same, arrested the petitioner and forwarded him to Court. The accused-petitioner being the registered owner of the seized vehicle, filed a petition under section 457 of the Cr. P.C. before the learned S.D.J.M., Bhubaneswar, praying to release the vehicle in his favour; but

his prayer was refused on the ground that the vehicle has been involved with the commission of offence under Bihar & Orissa Excise Act (hereinafter called “the Act”) and the petitioner being accused in that case, the same cannot be released in his favour. Challenging such order, the present revision has been filed.

3. Learned counsel appearing for the petitioner submitted that the petitioner had no knowledge about the contents of the cartoons and when he has no such knowledge, no confiscation proceeding has been initiated so far and he is the registered owner of the seized vehicle, the said vehicle should have been released in his favour. He further submitted that the learned S.D.J.M., Bhubaneswar has erred in law by not appreciating the facts of the case and rejected the petition filed to release the vehicle in favour of the petitioner. According to him, the order of the learned S.D.J.M. is unjustified, arbitrary and against law, as he has not considered the prayer of the petitioner in right perspective. Learned counsel for the petitioner further submitted that the learned Court below has failed to exercise the jurisdiction, for which the present petition is filed to set aside the order and release the vehicle in favour of the petitioner.

4. Learned P.P. in charge opposed the petition,

stating that the petitioner is the owner of the vehicle and he being accused in the commission of the offence under the Act, the vehicle should not be released in his favour, even if he is its registered owner. He supported the order of the learned S.D.J.M., Bhubaneswar and submitted to dismiss the revision.

5. Perused the impugned order, FIR, seizure list and other materials on record. The learned S.D.J.M., Bhubaneswar has opined that since the petitioner has been involved in the commission of the alleged offence, it would not be proper to release the vehicle in his favour. On going through the seizure list, it appears that two numbers of cartoons containing 35 numbers of Aska-40 sealed bottles each and one auto rickshaw were seized from the possession of the present petitioner on 30.03.2014 at 8.45 A.M. on N.H. No.215 near Saptasati temple. It is also found that the petitioner has filed the copy of the Registration Certificate of the seized vehicle and permit to show that he is registered owner of the said vehicle. It is well settled law that the vehicle seized in a criminal case should be released in favour of its owner. Here, prima facie, the petitioner has knowledge about seizure of the cartoons containing contraband articles from his vehicle while he was driving the same. There is no material to show that the passengers were there and they fled away. Of course, this is

subject to trial of the case; but, at present, the petitioner has got the knowledge of seizure of such contraband article from his vehicle while the vehicle was carrying the same. At the same time, the report of the I.O. shows that there is no confiscation proceeding initiated against the seized auto rickshaw. It is reported in **(2003) 24 OCR (SC) 444** (*Sunderbhai Ambala Desai* Vs. *State of Gujarat*), wherein Their Lordships have been pleased to observe at para-17 & 18 that :

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then the insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared”.

With due respect to the said decision, I find in the

instant case that the seized vehicle has been claimed by the accused-owner. Keeping the said vehicle in exposure to sun, light and rain would diminish the intrinsic value of the vehicle and it will cause its damage. Their Lordships in the case of ***Soubhagya Kumar Panda Vs. State of Orissa [(2003) 25 OCR - 840]*** have been pleased to observe at para-7 that :

“xx xx xx xx

Since the power of the Collector or the Executive Officer to release a property pending final orders by the Magistrate under Section 67(1) of the Act is confined to only property seized as liable to confiscation under section 66 of the Act and does not extend to the property which is not seized as liable to confiscation, the Magistrate will have the powers under Sections 451 and 457 of the Cr. P.C. to deal with such property not liable to confiscation in the manner indicated in the said provisions of Sections 451 and 457 of the Cr. P.C.”.

With due respect to the said decision, I find that where the seized property is not liable to confiscation, the Magistrate will exercise the powers under section 457 of the Cr. P.C., but where the property seized is liable to confiscation, the Collector under the Act shall have the powers to confiscate the property. In the instant case, the accused himself being the owner of the vehicle has been implicated. It is true that confiscation proceeding has not yet been started, but it is for the Investigating Agency to take care of the vehicle

and produce the same before the Confiscating Authority. When as per proviso to section 66 of the Act, the accused himself being implicated in this case is the owner of the seized vehicle, the vehicle in question is liable to confiscation and hence the learned S.D.J.M., Bhubaneswar has rightly not passed order for disposal of the seized vehicle in favour of the petitioner. On the other hand, there is no justifiable reason to interfere with the order of the learned S.D.J.M., Bhubaneswar. Hence ordered :

O R D E R

The revision being devoid of merit stands dismissed. However, the prosecution is instructed to take steps for disposal of the seized property by placing the matter before the Appropriate Authority, if so advised, in view of the direction of the Hon'ble Apex Court in the case of *Sunderbhai Ambala Desai Vs. State of Gujarat* (supra) to dispose of the case within the period, as observed.

**Sessions Judge, Khurda
at Bhubaneswar.**

01.09.2014.

Dictated, corrected by me and pronounced in the open Court this day the 01st September, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

01.09.2014.

