

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

Present:

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

*Dated, Bhubaneswar the 22<sup>nd</sup> Sept. '14.*

**Crl. Revision No. 33 of 2014.**

[Arising out of the order dated 10.04.2014 passed by the learned S.D.J.M., Bhubaneswar in Crl. Misc. Case No.288 of 2013, corresponding to G.R. Case No.2498 of 2012.]

HDFC Bank Ltd., a Company registered under the Company Act, 1956 having its registered office at "HDFC Bank House", Senapati Bapat Marg, Lower Parel (West), Mumbai-400 013 and also having its Area/Regional Office at A/62/1, Unit-8, Nayapalli, Bhubaneswar, Dist. - Khurda, Odisha, represented by its Assistant Manager Sri Harekrushna Mohanty duly authorized in this behalf by a power of attorney.

... **Petitioner.**

***-V e r s u s-***

1. State CID CB (EOW), Bhubaneswar.
2. Prashanta Kumar Dash, aged about 49 years, S/o. Umesh Chandra Dash, resident of 205, N.A. Majustic Apartment, Laxmisagar, Bhubaneswar, Dist. - Khurda, Odisha.

... **Opp. Parties.**

**Counsel :**

For Petitioner -- Shri M.R. Mishra & Associates.  
For O.P. No.1 -- Special P.P., EOW.

For O.P. No.2 --Shri S. Pattnaik & Associates.

Date of argument : 17.09.2014.

Date of order : 22.09.2014.

## **O R D E R**

This revision is directed against the order dated 10.04.2014 passed by the learned S.D.J.M., Bhubaneswar in CrI. Misc. Case No.288 of 2013, arising out of G.R. Case No.2498 of 2012, allowing the petition filed by opposite party No.2 (petitioner in the Court below) under section 457 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) for release of BMW 520 D. Sedan car bearing registration No. OR-02-BT-4090 in his favour.

2. The case of the petitioner is that opposite party No.2 is in possession of the vehicle bearing registration No.OR-02-BT-4090. It was purchased by opposite party No.2 having incurred a loan from the petitioner. But, the said vehicle was seized by the Crime Branch being involved in a criminal case initiated against opposite party No.2. Vide Criminal Misc. Case No.213 of 2013, opposite party No.2 moved the learned S.D.J.M., Bhubaneswar to release the said vehicle and his prayer was allowed. Against such order, the present petitioner preferred revision before this Court and on 15.02.2014, this Court directed the learned S.D.J.M.,

Bhubaneswar to pass order afresh after hearing the petitioner. Now, the learned S.D.J.M. in CrI. Misc. Case No.288 of 2013, arising out of G.R. Case No.2498 of 2012, passed the impugned order, directing to release the vehicle in question in favour of opposite party No.2 with certain conditions. Being aggrieved by the said order, the petitioner has again approached this Court in the present revision.

3. Learned counsel appearing for the petitioner submitted that there being a hire purchase agreement with the petitioner, the vehicle in question should not be released in favour of opposite party No.2 as there is outstanding loan against him in respect of the said vehicle. He further submitted that the impugned order is not maintainable against the petitioner as the vehicle is liable to be seized otherwise by the financial organization since outstanding dues has not been repaid. Thus, he prayed to set aside the order.

4. Learned counsel appearing for opposite party No.1 submitted that the order of the learned Court below is also wrong otherwise because it lacks jurisdiction to dispose of the property when the case has already been handed over to the Designated Court for trial of offences 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.

5. Supporting the order of the learned S.D.J.M., Bhubaneswar, learned counsel appearing for opposite party No.2 submitted that the vehicle being subject to damage and decay has been rightly released in favour of its registered owner, who is none other than opposite party No.2.

6. I have heard both parties and gone through the record. It appears that for the second time this revision has been filed against the release of the vehicle in question. It was submitted by learned counsel for opposite party No.1 that after submission of charge-sheet, the case has been transferred to the Designated Court. On going through copy of the charge-sheet filed by learned Special P.P., it is found that charge-sheet has already been submitted against opposite party No.2 under various provisions of law, viz., sections 420/406/467/468/471/120-B/34, 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. Of course, when the order was passed by the learned S.D.J.M., no charge-sheet was filed. But, the situation has improved and charge-sheet having been filed, the case has

been transferred from the file of the learned S.D.J.M. to the Designated Court.

7. Now, the seminal question that emanates for consideration is whether the learned S.D.J.M., Bhubaneswar is competent to pass the impugned order, directing the release of the vehicle in question under section 457 of the Code ? For this, the relevant 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.

8. Now, adverting to the case at hand, it is revealed that the Crime Branch has already submitted charge-sheet

against opposite party No.2 and others under the aforementioned offences and the seized vehicle is already kept in E.O.W. premises. It is reported by learned Special P.P. that the case has already been transferred to the Designated Court. Once the process under the Act has been started, any claim over the seized property is required to be decided and disposed of in the Designated Court itself. 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 have been ousted for the learned S.D.J.M., Bhubaneswar to dispose of such property. In the instant case, when the petitioner claims that the vehicle should be released in his favour being a hire purchaser, he can well move the Designated Authority, if so advised, for disposal of the same. Another question that arises as to whether the property is subject to damage and regular Court should take up the same, but seizure list shows that it has been kept in the office of Economic Offence Wing. No question of damage to the seized vehicle arises.

9. 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. Consequently, the

impugned order directing the release of the vehicle in favour of opposite party No.2, which has been assailed in this revision, exceeds the jurisdiction of the learned S.D.J.M., Bhubaneswar. Hence ordered :

**O R D E R**

The Criminal Revision is allowed on contest without cost and the order dated 10.04.2014 passed by the learned S.D.J.M., Bhubaneswar in CrI. Misc. Case No.288 of 2013, arising out of G.R. Case No.2498 of 2012, is hereby set aside.

It is made clear that both parties are at liberty to move before the Designated Court, if so advised, for disposal of the property in question.

**Sessions Judge, Khurda  
at Bhubaneswar.**

22.09.2014.

Dictated, corrected by me and pronounced in the open Court this day the 22<sup>nd</sup> September, 2014.

**Sessions Judge, Khurda  
at Bhubaneswar.**

22.09.2014.