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IN THE HIGH COURT OF SIKKIM

Crl. Rev. No.11/2000.

Date of Decision:26-5-2000.

State of Sikkim

... Petitioner

Vs.

Mrs. Sabita Gazmer,  
Jorethang, South Sikkim.

... Respondent

Coram :

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.

The Hon'ble Mr. Justice Anup Deb, Judge.

Present: Mr. S.P. Wangdi, Public Prosecutor with  
Mr. Karma Thinlay, Asstt. Govt. Advocate  
for the State.

**JUDGMENT**

Dayal, CJ.

This criminal revision was registered suo motu by this Court in order to be satisfied as to the correctness, legality and propriety of the Order dated 24-2-2000 passed by Mr. P. W. Pulger, Chief Judicial Magistrate, South and West at Namchi in Crl. Misc. Case No.5/2000. That order was passed with respect to an application filed under Section 451 Cr.P.C. by the owner of the vehicle for release of the seized vehicle in connection with Jorethang P.S. Case No.46(12)99 dated 23-12-1999 under Sections 363/376/342/34. The relevant portion of the order reads as under:-

“Petition is allowed.

Seized article vehicle bearing No.SK-02/6220  
alongwith documents seized in connection with  
Jorethang P.S. Case No.46(12)99 dated 23-12-99 U/S  
363/376/342/34 I.P.C. be released forthwith.”


The aforesaid order shows that the learned Magistrate was not conversant with the provisions of Section 451 I.P.C. He did not mention in the order the stage of the case at which the order was passed. Therefore, we passed an order requiring the Investigating Officer to be present along with the case diary. The Investigating Officer is present with the case diary and we find that the charge sheet has already been filed by the police in the Court. When the case is pending in the Court, the seized vehicle may be required during the trial. Section 451 Cr. P.C. in its material part reads as under:-


*M. M. M.*

“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.”

This provision provides for an order for the proper custody of the property pending the conclusion of the inquiry or trial. As the trial had not concluded, the only order that could be made was for the custody of the vehicle and not for the release of the vehicle without any condition. As such, the impugned order is wholly illegal and improper.

In the result, the revision is allowed and the impugned order dated 24-2-2000 is set aside and the matter is remanded to the trial Court. The owner of the vehicle should appear before the learned trial Court on 24-6-2000. On 17.5.2000 we directed that the respondent, Sabita Gazmer, the owner, shall not dispose of or part with the possession of the vehicle bearing No.SK-02/6220 in question until further orders. This order shall be operative till 24.6.2000.

  
**( A. Deb )**  
**Judge**  
**26-5-2000.**

  
**( R. Dayal )**  
**Chief Justice.**  
**26-5-2000.**