

IN THE HIGH COURT OF SIKKIM AT GANGTOK

(Criminal Revisional Jurisdiction)

Criminal Revision Petition No.08/2012

Dated : 21.11.2012

CORAM
THE HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

Shyamal Kumar Ghosal,
S/o Shri Sudhir Ghosal,
R/o Baktarnagar,
P.S. Raniganj,
Distt. Burdwan,
West Bengal.

Versus

1. State of Sikkim
Through the Public Prosecutor,
Gangtok at Sikkim.
2. Shri Karma Sonam Wangyal,
S/o Shri T. W. Bhutia,
R/o Sumick,
Lingzey,
East Sikkim.

FOR THE PETITIONER : MR. SUJOY CHAKRABORTY
MR. RAVI SHANKAR SHARMA
MR. D. K. SIWAKOTI,
ADVOCATES.

FOR THE RESPONDENT : MR. J. B. PRADHAN, PUBLIC
NO. 1 PROSECUTOR, MR. KARMA
THINLAY NAMGYAL, ADDL.
PUBLIC PROSECUTOR
MR. S. K. CHETTRI, ASSTT.
PUBLIC PROSECUTOR.
PI K. B. GURUNG,
SHO RABONGLA.

FOR THE RESPONDENT : MR. A. K. UPADHYAYA,
NO.2 SENIOR ADVOCATE
MS. BINITA CHETTRI AND
MS. POLLIN RAI, ADVOCATES

ORDER (ORAL)

Wangdi, J

This Criminal Revision Petition is directed against the impugned order dated 07.06.2012, passed by the Learned Chief Judicial Magistrate, South and West Sikkim at Namchi, in Criminal Misc. Case No.38 of 2012, by which the custody of a vehicle (Bolero-SLX) bearing Registration No.JH-10/W5769 seized in a case registered under Section 379/34 IPC in Police Case No.09(5)2011 dated 07.05.2011 was handed over to the Respondent No.2.

2. The grievance of the Petitioner is that the seized vehicle is owned and registered in his name with Registration No.WB-38Y-9283 which had been stolen in the night of 24.02.2011 from a premises at Durgapur, West Bengal, in respect of which he had lodged a FIR in the Durgapur N.T.S. on 24.02.2011. It is further the case of the Petitioner that he was informed of the seizure of the vehicle under a fake registration number at Rabongla by a letter from the Rabongla Police Station. Immediately after this, he approached the Rabongla P.S. for recovery of the vehicle where he was informed that it had been handed over to the Respondent No.2 by the Court of the Learned Chief

Judicial Magistrate by its order dated 08.09.2011. On being so informed, the Petitioner had approached the Court of the Learned Chief Judicial Magistrate for release of the vehicle by filing an application under Section 451 Cr.P.C. on 03.05.2012 but the learned Chief Judicial Magistrate by the impugned order dated 07.06.2012 was pleased to reject the application primarily on the ground that disturbing order dated 08.09.2011 in Criminal Misc. Case No.91 of 2011 would amount to reviewing his own order.

3. Mr. Sujoy Chakraborty, learned Advocate for the Petitioner, submits that the Petitioner is the registered owner of the vehicle and is, therefore, entitled to its possession under Section 451 Cr.P.C. As per him, this fact stands established by the letter dated 13.09.2011 of the Rabongla Police Station, by which it had been acknowledged that he was the owner of the stolen vehicle. His ownership of the vehicle is also supported by Vehicle Registration Certificate issued by the Motor Vehicles Department, Asansol, filed as Annexure P-1 to the petition. It is further his submission that the registration in favour of the Respondent No.2 has been found to be a fake one, which is apparent from the letter of the District Transport Officer at Ranchi dated 12.09.2011 addressed to the Officer-in-Charge,

Rabongla Police Station. Mr. Chakraborty also has referred to the original Registration Certificate by placing it before this Court to show that the Petitioner is indeed the registered owner of the questioned vehicle. As per him, the learned Chief Judicial Magistrate ought to have allowed his application and placed the vehicle in his custody and, if for any reason doubts had arisen in respect of its ownership, direction ought to have been issued to the Investigating Agency for enquiry on this aspect. Finally it was urged that at the least the matter deserved to be remanded to the learned Chief Judicial Magistrate for his consideration afresh. Accordingly, appropriate directions were sought for.

4. Mr. J. B. Pradhan, the learned Additional Advocate General who is also the Public Prosecutor, submits that there is no error in the impugned order, in as much as, the order under Section 451 Cr.P.C. is interim in nature and it does not in any manner pass on the ownership of the vehicle to the Respondent No.2. He submits that the Investigating Officer of the case has already taken steps to enquire into this aspect and necessary correspondences are being made to the appropriate authorities. Since the vehicle has been properly

secured which is the object of Section 451 Cr.P.C. the Criminal Revision Petition would not be maintainable.

5. Mr. A. K. Upadhyaya, learned Senior Advocate appearing on behalf of the Respondent No.2, submits that the vehicle has been secured by the impugned order by, inter alia, obtaining a bond of Rs.5 lakhs from the Respondent No.2 with a direction upon him to produce it as and when it is required during the trial. In view of this, the question of the vehicle being sold or disposed of by the Respondent No.2 as apprehended by the Petitioner is misplaced. Mr. Upadhyaya seriously objected to the additional documents sought to be placed on record on behalf of the Petitioner as those were not available during the proceedings before the learned Chief Judicial Magistrate. It is his submission that in the present proceedings we are to confine ourselves to the impugned order and the materials on the records of the proceedings before the learned Chief Judicial Magistrate.

6. I have considered the rival contentions and have examined the documents available on the records and I am of the view that the impugned order does not suffer from any illegality or impropriety. The object underlying Section 451 Cr.P.C. is to ensure proper

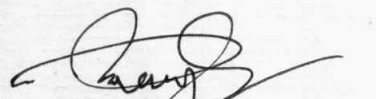
custody pending conclusion of the inquiry or trial. The crux of the matter before this Court and before the learned Chief Judicial Magistrate is the ownership of the vehicle. Although the Petitioner asserts his ownership over the vehicle on the basis of the Certificate of Registration issued by the Registering Authority at Asansol and the Respondent No.2 asserts so by placing reliance upon the Registration Certificate issued by the Jharkhand Authorities, it is not for this Court in the present proceedings to arrive at a finding on that. This is a matter for the Investigating Agency to inquire into. As per the learned Public Prosecutor, the Investigating Agency is actively enquiring into this and I find no reasons to disbelieve this. It is a settled position that in a proceeding under Section 451 Cr.P.C. custody of property ought to be given to the person from whom it had been seized or in whose name it stands registered. The learned Chief Judicial Magistrate having found to have considered this aspect, I do not find any reason to interfere with the impugned order. As of now prima facie the Respondent No.2 who appears to have a valid Vehicle Registration Certificate in his name pertaining to the vehicle issued by the Jharkhand Authorities which, of course, is subject to the outcome of the inquiry and trial. Under Section 110 of the Evidence

Act there is always a presumption that a person who is in actual physical possession of the property is the owner of such property unless contrary is established. It is found from the Order dated 08.09.2011 that stringent conditions have been imposed while releasing the vehicle in favour of the Respondent No.2.

7. For all these reasons, this Court is of the view that it would be inappropriate for it to interfere with the impugned order. The Investigating Agency is expected to get at the root of the matter and, as per the Learned Public Prosecutor, on being instructed from the I.O. who is present in Court, charge sheet is likely to be filed within a reasonable time.

8. In the result, the Criminal Revision Petition stands dismissed.

9. No order as to costs.


(S. P. Wangdi)
Judge
21.11.2012

Approved for Reporting : Yes/No

Internet : Yes/No

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