

HIGH COURT AT JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 29865 of 2024

Waseem Riaz...

..Applicant

Versus

State of U.P. and Another....

... Opposite Parties

Counsel for Applicant :- Atharva Dixit, Pranav Tiwary

Counsel for Opposite Party :- G.A.

JUDGMENT

Hon'ble Sanjay Kumar Pachori, J.

1. The present application under Section 482 of The Code of Criminal Procedure (hereinafter referred as "Cr.P.C") has been filed for quashing the order dated 1.7.2024 passed by Additional Sessions Judge/Special Judge (POCSO Act), Court No. 2, Varanasi, in Criminal Revision No. 422 of 2022 (Waseem Riaz vs. State of U.P.) whereby the Revisional Court affirmed the order dated 13.10.2022 passed by Additional Civil Judge (Senior Division)/Judicial Magistrate, Court No. 2, Varanasi on an application under Section 457 read with Section 451 of Cr.P.C for release of the Indian currency of Rs. 1,87,00,000/-, which was seized during the investigation of Case Crime No. 46 of 2022, under Sections 419, 420, 406, 120-B, 411, 467, 468, 471 of I.P.C. registered on 21.04.2022 at Police Station Chetganj, District Varuna (Commissionerate Varanasi) filed by the present applicant on behalf of his father after having authority, which has been dismissed.

2. Brief facts as culled out from the record are that the applicant filed an application under Section 457 read with Section 451 of Cr.P.C. for release Indian Currency Rs. 1,87,00,000/- which has been recovered and seized

during investigation of Case Crime No. 46 of 2022 registered at Police Station Chetganj, District Varuna (Commissionerate Varanasi) from co-accused Sachin Sharma. As per the recovery memo dated 28.04.2022, Indian currency has been recovered in denomination of Rs. 2000/-, Rs. 500/-, Rs. 200/-, Rs. 100/- as 983, 33088, 600 and 700 respectively stating that the applicant is the real owner of the aforesaid case property.

2(i). After lodging of the First Information Report dated 21.04.2022, which has been registered by private opposite party no. 2 against four named accused persons by first informant who is admittedly an agent of Sapos Services Pvt. Ltd. (collection company). During the investigation Police seized the Indian currency of Rs. 1,87,00,000/- by recovery memo dated 28.04.2022.

2(ii). After completing the investigation, charge sheet has been submitted against four accused persons under Sections 419, 420, 406, 120-B, 411, 467, 468, 471 of I.P.C. and the trial of the aforesaid case is pending.

2(iii). The present applicant filed an application on 13.05.2022 under Section 457 read with Section 451 of Cr.P.C. to release the seized Indian currency on behalf of his father, on the basis of authority which has been given by his father as the applicant is sole son, who look after the business of his father, passed for interim custody in favour of the applicant, who claimed himself to be the owner of the property seized, which has been dismissed by learned Magistrate on 13.10.2022. Being aggrieved by the order of the learned Magistrate, applicant filed Criminal Revision which has also been dismissed on July 1, 2024.

2(iv). The accused persons have not filed any application to release the Indian currency till today.

2(v). The first informant has not filed any application to release the aforesaid cash in his favour till today and admittedly he gave consent to release the aforesaid Indian currency in favour of present applicant.

3. The Learned Magistrate observed that the present Indian currency is a case property of the aforesaid Case Crime. However, observed that the

applicant is real owner of the seized Indian currency. There is no dispute with regard to the ownership of the aforesaid currency. As per pre-summoning evidence (statement of first informant), the first informant collected the aforesaid amount on behalf of father of the applicant.

4. The Income Tax Commissioner filed an application to release aforesaid cash stating that the source and nature of seized cash could not be explained. On 07.09.2022, the S.H.O. Chetganj, Varanasi was issued requisition letter which has been served but the S.H.O. has not delivered cash to Income Tax Department. It is further alleged that the seized amount represented is undisclosed income, the objection of the assessee have to be decided under Section 132 of the Income Tax Act itself and the court has no power to decide the application in similar proceedings under Section 457 of Cr.P.C., which has been rejected vide order dated 13.10.2022, and Criminal Revision has also been filed against the order dated 13.10.2022, which has also been rejected by Additional Sessions Judge Court No. 2, Varanasi on 02.07.2024.

5. Learned Senior Counsel submits that the impugned order has been passed without considering the facts and circumstances and position of law. It is further submitted that there is no dispute with regard to the ownership of the aforesaid Indian currency, which has been recovered and seized during the investigation of case crime no. 46 of 2022. There is no argument so far as the offences of prevention of corruption Act are concerned. There is no reason as well as argument by the State as to why the money is required to be detained when it is the contention of the prosecution that the investigation is completed.

6. Learned Senior Counsel for the applicant relied upon the judgment of Apex Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283**. The applicant expressed his readiness and willingness to execute a bond to produce the same before the Court as and when required to do so as per Section 102(3) of Cr. P.C.

7. Sri Gaurav Mahajan, learned counsel for Income Tax Department requested to assist the Court in the matter, in response to aforesaid request

and after receiving instruction, who admits that no other proceeding has been filed against the order dated 02.07.2024.

8. **Per Contra**, learned AGA as well as Sri Gaurav Mahajan, learned counsel for Income Tax Department have not denied the factual matrix of the present matter and also admitted that the aforesaid Indian currency has not been seized under Section 132(A) of Income Tax Act, 1961 or no other case has been lodged under any other Act.

9. Heard, Sri Manish Tiwary, learned Senior Counsel assisted by Sri Atharva Dixit and Sri Pranav Tiwary, learned counsels for the applicant, Sri Gaurav Mahajan, learned counsel for Income Tax Department, Sri Vedanta Agarwal, learned counsel for opposite party no. 2 and Sri Tej Bhan Singh, learned A.G.A for the State and perused the material on record.

10. Present matter is related to interim custody of seized Indian Currency in the above noted case. Learned Magistrate dismissed the release application of the applicant and a Criminal Revision has been filed against the order dated 13.10.2022 passed by the learned Magistrate, before the Sessions Judge, which has been decided by Additional Sessions Judge/Special Judge (POCSO Act), Court No. 2, Varanasi on July 1, 2024 and affirmed the order passed by the Magistrate.

11. Before advertng to the relief sought by the applicant, it would be essential to mention few more facts which are relevant. A brief reference of the authority given by father of the applicant in favour of the applicant as well as consent of the opposite party no. 2/first informant are essential for further consideration, which are as under:

11(i). F.I.R. dated 21.04.2022 has been lodged by the opposite party no. 2 against the four named persons namely Amit Mittal, Sonu Lakda, Sandeep Khatri and Abhishek Goyal as:

“सेवा में श्रीमान प्रभारी निरीक्षक साहब थाना चेतगंज वाराणसी महोदय निवेदन है कि मैं प्रार्थी अंकित शुक्ला पुत्र सोमेश्वर नाथ शुक्ला ग्राम ममुआ थाना राबर्टसगंज सोनभद्र का निवासी हूं हाल पता अकथा चौराहा थाना लालपुर पांडेपुर वाराणसी मैं प्रार्थी सापोस सर्विसेज प्रा० लि० कंपनी में सेल्स मैनेजर के पोस्ट पर काम करता हूं मैं

कंपनी के भेजे गए रेशम को बुनकरो को थोड़ा थोड़ा करके बेचता हूं और उनसे नकद कलेक्शन करता हूं दिनांक 16.04.2022 को मेरे रिश्तेदार अश्वनी कुमार पाण्डे के मोबाइल नंबर 8400412764 पर अभिषेक गोयल मोबाइल नंबर 7506721039 से फोन आया और उनसे कहा कि मैं आप से कैश पैसे लेकर आपके अकाउंट में उताने ही पैसे कुछ कमीशन लेकर ट्रांसफर करा दूंगा और उसने अमित मित्तल उर्फ यश मित्तल मोबाइल नंबर 8427612327 और कहा कि यह चार्टर्ड अकाउंटेंट है आप इनसे बात करके मिल लीजिए आपका काम हो जाएगा दिनांक 18.04.2022 को मैं अमित मित्तल उर्फ यश मित्तल से बात करके उसके मलदहिया स्थित ऑफिस पर मिलने गये था मैं उसकी बातों से संतुष्ट हो गया आज दिनांक 20.04.2022 को समय सुबह 10.00 बजे बुनकरो से इकट्ठा किए हुए कुल कैश 2 करोड़ रुपये लेकर टैक्स बचाने के नियत से अमित उर्फ यश मित्तल के मलदहिया स्थित ऑफिस पर पहुंचा वहां पर अमित उर्फ यश मित्तल व उसके 2 साथी जो क्रमशः सोनू लाकड़ा व सदीप खत्री जो बोलचाल से हरियाणा के लगते थे पहले से मौजूद थे लोगो ने कहा कि कैश गिन कर अकाउंट में ट्रांसफर कर देते हैं और ऑफिस के अंदर ही दूसरे कमरे में पूरे कैश गिनवाने के लिए रखवा दिया और मेरे साथ धोखाधड़ी करते हुए बारी बारी से मेरा सारा कैश लेकर वहां से चले गए मेरे साथ मेरे रिश्तेदार अश्वनी कुमार पांडे भी ऑफिस में मौजूद थे उन्हें कुछ शक हुआ तो वह बगल वाले कमरे में गए तो वे चिल्लाए की ना तो कमरे में कैश है और ना ही वे लोग हैं वे सभी ऑफिस के दूसरे रास्ते से धोखाधड़ी करते हुए मेरा सारा कैश लेकर फरार हो गए उन लोगों का काफी तलाश किया लेकिन नहीं मिले। अतः महोदय से अनुरोध है कि उचित कानूनी कार्यवाही करने की कृपा करें। प्रार्थी अंकित शुक्ला मो० नं० 8299046897 दिनांक 20.04.2022 नोट मुझ का०मु०मो० सारिक द्वारा बोल बोल कर टाइप कराया गया।"

11(ii). Opposite party no. 2/ first informant filed no objection against the release application of the applicant which is as follows:

"2. यह कि उक्त अ 0 सं० में वसीम रियाज पुत्र मुस्तफा कमाल निवासी एन 0 12/361 सी-7 आजाद नगर बजरडीहा थाना भेलपुर जनपद वाराणसी धारा मु 0 1,87,00,000/- (एक करोड़ सत्तासी लाख रु०) का रिलीज प्रार्थनापत्र दिनांकित 13.05.2022 मा० न्यायलय में दाखिल है उसकी पूर्ण जानकारी प्रार्थी/वादी को हैं। संपूर्ण धनराशि वसीम रियाज के फर्म कमल साड़ीज की थी।

3. यह कि उक्त धनराशि मा० न्यायलय द्वारा वसीम रियाज के पक्ष में अवमुक्त की जाती है तब प्रार्थी/वादी को उक्त धनराशि वसीम रियाज के पक्ष में अवमुक्त किये जाने

से कोई आपत्ति नहीं है ऐसी स्थिति में उक्त धनराशि वसीम रियाज के पक्ष में रिलीज़ किया जाना न्यायसंगत होगा।"

11(iii). The applicant filed release application aforesaid, as son of the owner of the firm Kamal Sarees i.e. on behalf of his father on the basis of following authority:

"मैं मुस्तफा कमाल पुत्र स्व० मोहम्मद रफीक निवासी - एन० 12/ 361 सी-7 आजाद नगर बजरडीहा, थाना - भेलूपुर, जनपद वाराणसी का निवासी हूँ व कमल साडिज नामक फर्म का प्रोपराईटर हूँ। फर्म का GST. IN\UIN नम्बर- 09ANPPK48371ZI है चूँकि मेरी उम्र ज्यादा है व मुझे कई गम्भीर रोग हैं इसी कारण उक्त फर्म का सभी कार्य/विधिक कार्य मेरे पुत्र वसीम रियाज पुत्र मुस्तफा कमाल निवासी - एन० 12/361 सी- 7 आजाद नगर बजरडीहा, थाना - भेलूपुर, जनपद वाराणसी द्वारा किया जायेगा उक्त सम्बन्ध में मैं यह सहमति पत्र अपने पूर्ण होशो-हवाश में बिना किसी जोर जबरदस्ती के हस्ताक्षरित कर रहा हूँ।"

12. It is admitted fact that the aforesaid seizure has been made under Section 102 of Cr.P.C. The scheme of seizure under Section 102 of Cr.P.C. is material different from other Act. Section 102 of Cr.P.C. reproduced as under:

"102. Power of police officer to seize certain property:- (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer-in-charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

13. A plain reading of sub-section (1) of Section 102 indicates that the Police Officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression 'any property' and 'any offence' have made the applicability of the provisions wide enough to cover offences created under any Act. But the two pre- conditions for applicability of

Section 102(1) are that it must be *firstly*; 'property' and *secondly*; in respect of the said property there must have suspicion of commission of any offence. However, the said order of seizure is only a temporary order and in terms of sub-section (3) of Section 102 of Cr. P.C., the police officer seizing any property on the grounds of suspicion of an offence is required to forthwith report the seizure to the Magistrate having jurisdiction.

14. The said property seized is required to be produced before a Court and/or reported to a Magistrate. In such cases, the court would have the power to pass necessary orders with regard to the said property. In terms of Section 457 of the Cr.P.C., whenever a property is seized by any police officer and is reported to the Magistrate, the Magistrate is empowered to make such orders as he thinks fit in respect of disposal of the property or the delivery of such property to the person entitled to the possession thereof. In cases where such person cannot be ascertained, the Magistrate can pass orders in respect of the custody and production of such property.

15. It would be useful to refer the provisions of Section 451 and 457 of Cr.PC. which reproduced as under:

"451. Order for custody and disposal of property pending trial in certain cases.-

When any property is produced before any Criminal Court during any 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.

Explanation- For the purposes of this section, "property" includes (a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to

the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

16. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, *Firstly*; for the proper custody pending conclusion of the inquiry or trial; *Secondly*; to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary; *Thirdly*; if the property is subject to speedy and natural decay, to dispose of the same.

17. In **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283**, the Supreme Court observed that application under Section 451 Cr.P.C with regard to perishable goods, narcotics, contraband, vehicles, cash and ornaments that are subject matter of criminal proceedings to be decided expeditiously and judiciously. The various guidelines and direction issued by the Apex Court after referring the judgment of Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr., (1977) 4 SCC 358, are relevant to reproduce as paragraphs 7, 8, 9, 10, 11 and 12 which are as under:

"7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail ; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in number of matters. In *Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr.*, [1977] 4 SCC 358, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.

11. *Valuable Articles and Currency Notes* With regard to valuable articles, such as golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass

appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

12. For this purposes, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

(1) preparing detailed proper panchanama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.”

18. In the case of **General Insurance Council v. State of A.P., (2010) 6 SCC 768** the Supreme Court reiterated that need for compliance of directions given in the case of *Sunderbhai Ambalal Desai (supra)*. A similar view has also been taken in the case of **Biswajit Dey v. State of Assam, 2025 SCC OnLine SC 40** at para 23.

19. It is settled position of law that no person shall be deprived of his or her property without the authority of law, as declared by Article 300A of the Constitution of India. Therefore, when the property, so seized by the investigating agency, need not physically remain with the prosecution to bring the trial or litigation, relating to or connected with the seized property, to its logical conclusion, then the seized property shall be released to the rightful owner, or the person who is entitled thereto. As to who is the rightful owner or the person entitled to the possession of the property shall be guided by the proof based on preponderance of the probabilities.

20. However, it is made clear that the release of the property in favour of the owner or the person found to be entitled to the possession of the properties shall not operate as the declaration of title of that person to the property which shall always be subject to the litigation, if any pending or to be instituted before the Civil Court.

21. After having gone through the entire material on record the following facts emerged:

- (i) The Indian currency of Rs. 1,87,00,000/- has been seized under Section 102 of Cr.P.C. on 28.04.2022 from co-accused Sachin Sharma and a recovery memo has been prepared.
- (ii) F.I.R. of the present case has been lodged on 21.04.2022 at 00:32 A.M. The applicant filed the present release application before learned Magistrate on behalf of his father on 13.05.2022 stating that father of the present applicant run a firm Kamal Sarees, due to illness and old age of his father, the applicant solely look after the aforesaid firm. The applicant contracted Sapos Services Pvt. Ltd. situated at Bangalore. The amount of Rs. 2,00,00,000/- has been delivered to Sapos Services Pvt. Ltd. which is endorsed in the cash book and ledger account of the firm. Ankit Shukla agent of Sapos Services Pvt. Ltd., who delivered the aforesaid amount to the accused persons and except the present applicant, there is no other owner of the aforesaid Indian currency.
- (iii) Accused persons have not filed any release application claiming the owner of the aforesaid Indian currency in their favour.
- (iv) The opposite party no. 2 / first informant have a collective agents has given a consent in favour of the present applicant for release the aforesaid amount.
- (v) The Income Tax Department has not filed any proceedings against the order passed by Additional Sessions Judge, Court No. 2, Varanasi on 02.07.2024 in a Criminal Revision.
- (vi) The learned Magistrate has observed that applicant is prima-facie owner of the aforesaid Indian currency.

23. In view of the aforesaid facts and circumstances and keeping in mind the position of law in the judgment of **Sunderbhai Ambalal Desai (Supra)**, the present application under Section 482 of the Code stands **allowed**. The impugned orders dated 13.10.2022 and 01.07.2024 passed by the Additional Civil Judge (Sr. Division)/Judicial Magistrate, Court No. 2, Varanasi and Additional District and Sessions Judge/Special Judge (POCSO Act), Court No. 2, Varanasi, arising out of Case Crime No. 0046 of 2022, under Sections 419, 406, 420, 120B, 411, 467, 468, 471 of I.P.C., P.S. Chetganj, District

Varanasi, are hereby quashed and Indian currency, which has been seized by the police under Section 102 of Cr.P.C. during the investigation of Case Crime No. 46 of 2022, under Sections 419, 420, 406, 120-B, 411, 467, 468, 471 of I.P.C. is liable to be released as interim release subject to the judgment of case in favour of the applicant after submitting indemnity bond with undertaking that after decision of this case, if aforesaid released amount is found to be paid to any other person, applicant will return within stipulated time as directed by the trial court as well as after furnishing a surety of immovable property having value of Rs. 2,00,00,000/- by the applicant on following conditions:

- (i) The learned Magistrate is directed to release the aforesaid Indian currency in favour of the applicant an interim release subject to the decision of the case;
- (ii) After preparing a detail Panchnama/ inventory of the seized Indian currency of Rs. 1,87,00,000/- which has been seized by the police on 28.04.2022 with their numbers or denomination and the accused persons, first informant and the applicant shall sign the said inventory, after taking colour photographs of Indian currency.
- (iii) The photographs of such Indian currency notes should be attached and counter signed by the first informant, accused persons and the present applicant.
- (iv) The court concerned is directed to interim release the aforesaid amount as ordered, within a week after submitting the indemnity bond as well as surety aforesaid.

Order Date :- 8.4.2025

PS