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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31622 of 2021

Ashis Ranjan Mohanty (Adv.) *Petitioner*
In person

-versus-

State of Odisha and others *Opposite Parties*
Mr. S.N. Das, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE A.K. MOHAPATRA

JUDGMENT

31st January, 2022

Dr. S. Muralidhar, CJ.

1. A practicing Advocate has instituted this Public Interest Litigation concerned about the ever-growing stock of seized vehicles and other properties in the various police stations in the State of Odisha.

2. A sampling of the photographs of all kind of vehicles including two wheelers and three wheelers lying dumped outside the various police stations in Odisha have been enclosed with the petition's Annexure-1 series. It is stated that the seized vehicles dumped in police stations are causing encroachment on the public road adjoining the police stations and are also turning to junk on account of neglect over several years.

3. Apart from the vehicles, there are a range of other articles that have been seized in connection with various cases which are lying unattended to in the malkhanas of the various police stations. It is pointed out that despite the provisions in the Code of Criminal Procedure, 1973 (Cr PC) and the decisions of the Court, including the Supreme Court of India, from time to time, the spirit of law has not been adhered to and this has led to an impossible situation where most police stations in Odisha are left with a large inventory of abandoned vehicles and other materials. Urgent directions are accordingly sought in the present petition.

4. In the reply filed to the petition, the Additional Superintendent of Police, CID, Crime Branch, Odisha has disclosed that apart from a large number of vehicles lying for years together in the police station premises, there are other seized items including liquor, arms and ammunitions etc. which are lying at the police malkhana awaiting disposal. It is disclosed by the police that 19,149 vehicles have been seized in motor vehicle accident cases, dacoity cases, cases relating to the transportation of illicit narcotic drugs and psychotropic substances. Then there are vehicles that are abandoned.

5. It is pointed out that although in accordance with the provisions of Section 457 Cr PC read with Section 452 Cr PC, some of the vehicles do get released during the pendency of the case, there are still a large number of vehicles which are awaiting disposal pursuant to the orders to be passed by the Courts. Annexure-A/3 to the counter affidavit gives a list of a number of vehicles i.e.

two, three and four wheelers, involved in cases in each of the Districts and offices of the Special Forces in different cities. This table indicates that there are a total of 19,149 vehicles of which 1,536 are unclaimed vehicles spread over as many as 37 police stations/offices of the police.

6. The problem of accumulation of seized vehicles at police stations is not new. The issue has come up before the High Courts and the Supreme Court time and again and a series of directions have been issued from time to time.

7. An early acknowledgement of the problem was in a decision of the Supreme Court in *Basavva Kom Dyamangouda Patil v. State of Mysore (1977) 4 SCC 358* where the court stated that:

“4. The object and scheme of the various provisions of the Code (CrPC) 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 object of the Code (CrPC) seems to be that any property which is in

the control of the Court either directly or indirectly, should be disposed off by the court and a just and proper order should be passed by the Court regarding its disposal. In this broad sense, therefore, the court exercises an overall control on the actions of police officers in every case where it has taken cognizance.”

8. Thereafter, in *Sunderbhai Ambalal Desai v. State of Gujarat (2002) 10 SCC 283*, the court after analyzing the relevant provisions of the CrPC directed as under:

“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 the 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.”

9. In 2010 in *General Insurance Council and others v. State of Andhra Pradesh (2010) 6 SCC 768*, the Supreme Court directed as under:

"14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned."

10. The Delhi High Court in *Manjit Singh v. State* (decision dated 10th September 2014 in CRL.M.C.4485 of 2013) after analyzing all the judgments in the field, including the statutory provisions under the CrPC, issued a series of directions to tackle the problem. It ordered for compliance in terms of the decisions of the Supreme Court and passed detailed directions relating to the time limit for release, currency notes, vehicles, liquor and narcotic drugs, counterfeit coins, arms and ammunitions, disposal

of property at conclusion of trial, unclaimed properties as well as loss/theft/destruction of the case property in police custody.

11. Although there exist statutory provisions in the Cr PC and allied statutes to deal with the problem, and orders have been passed by the Supreme Court for their implementation, very little in actual terms has been done in Odisha to ease the pressure on the police malkhanas and thereby the Courts. This area appears to be by and large a neglected one and warrants immediate attention.

12. The Court's attention has been drawn to a judgment dated 4th January, 2019 passed by the learned Single Judge of this Court in ***Ghasana Mohapatra v. State of Odisha***, (2019) 1 OLR 275, wherein it was held that in excise cases when the accused is the owner of the seized vehicle, the same cannot be released in his favour. In another judgment dated 2nd November, 2020 in ***Ramkrushna Mahasura v. State of Odisha***, (2021) 81 OCR 635 it was held that when the vehicle that caused the accident has no third party insurance, it cannot be released without taking deposit of the money to which the victim is entitled to.

13. It is clarified that hereafter as far as release of the vehicle is concerned, the directions issued in this order would prevail.

14. In light of the decisions of the Supreme Court referred to hereinbefore, and the directions issued in ***Manjit Singh v. State*** (*supra*), the following specific directions are issued:

Articles/properties in general

15. (i) Within **one week** of their seizure, properties seized by the police during investigation or trial are to be produced before the Court concerned;

(ii) the concerned Court shall expeditiously, and not later than two weeks thereafter, pass an order for its custody in terms of the directions of the Supreme Court in *Basavva Kom Dyamangouda Patil v. State of Mysore (1977) 4 SCC 358*; *Sunderbhai Ambalal Desai v. State of Gujarat (2002) 10 SCC 283*, and *General Insurance Council v. State of A.P. (2010) 6 SCC 768*.

(iii) In any event, no property will be retained in the malkhana of the Court or in the police station longer than a period absolutely necessary for the purposes of the case; if it has to be longer than three months, the Court concerned will record the reasons in an order but on no account will the period of retention exceed six months.

(iv) In the event the property seized is perishable in nature, or subject to natural decay, or if cannot for any reason be retained, the Court concerned may, after recording such evidence as it thinks necessary, order the said property to be disposed of by way of sale, as the Court considers proper, and the proceeds thereof be kept in a separate account in a nationalized bank subject to orders of the concerned court.

Vehicles

16. As regards the vehicles, the following directions are issued:

(I) Vehicles involved in an offence may be released either to the rightful owner or any person authorised by the rightful owner after

(a) preparing a detailed *panchnama*;

(b) taking digital photographs and a video clip of not more than 1 minute duration of the vehicle from all angles;

(c) encrypting both the digital photograph and the video clip with a hashtag with date and time stamp with the hash value being noted in the order passed by the concerned court;

(d) preserving the encrypted digital photograph and video clip on a pen drive to be kept in a secure cover in the file and preferably also uploading it simultaneously on a server kept either in the concerned Court premises or in the server of the jurisdictional District Court

(e) preparing a valuation report of the vehicle by an approved valuer;

(f) obtaining a security bond.

(II) the concerned court will record the statements of the complainant, the accused as well as the person to whom the custody of the vehicle is handed over affirming that the above steps have taken place in their presence.

(III) Subject to compliance with (I) and (II) above, no party shall insist on the production of the vehicle at any subsequent stage of

the case. The *panchnama*, the encrypted digital photograph and video clip along with the valuation report should suffice for the purposes of evidence.

(IV) The Courts should invariably pass orders for return of vehicles and/or accord permission for sale thereof and if in a rare instance such request is refused, then reasons thereof to be recorded in writing should be the general norm rather than the exception.

(V) In the event of the vehicle in question being insured, the concerned Court shall issue notice to the owner and the insurance company prior to disposal of the vehicle. If there is no response or the owner declines to take the vehicle or informs that he has claimed insurance/released his right in the vehicle to the insurance company and the insurance company fails to take possession of the vehicle, the vehicle may be ordered to be sold in public auction.

(VI) If a vehicle is not claimed by the accused, owner, or the insurance company or by a third person, it may be ordered to be sold by public auction.

General directions

17. The following general directions shall also be adhered to:

(i) The concerned Court may impose any other appropriate conditions which it may consider necessary in the facts and circumstances of each case.

(ii) The Court shall hear all the concerned parties including the accused, complainant, Public Prosecutor and/or any third party concerned before passing the order. The Court shall also take into consideration the objections, if any, of the accused.

(iii) If the Court is of the view that evidence in relation to the condition of the vehicle is necessary to be recorded even before its disposal in terms of the directions in paras 9 and 10 above, then such evidence be recorded, in the presence of the parties, forthwith and prior to disposal of the property.

(iv) Special features of the property in question could be noted in the Court's order itself in the presence of parties or their counsel. Besides, a mahazar clearly describing the features and dimensions of the movable properties which are the subject matter of trial could be drawn up.

(v) If a person to whom the interim custody of the property/vehicle is granted is ultimately found not entitled to it, and is unable to return it, its value shall be recovered by enforcing the bonds and the security taken from such person or recovering the monetary value from him as arrears of land revenue.

(vi) As regards the directions issued in 16 (I)(c) and (d) is concerned, the Registry of the High Court will communicate to each of the District Judges the detailed Standard Operating Procedure (SoP) that is required to be followed. The directions

issued in 16(I) (c) and (d) will become operational as soon as the said SoP is received by the concerned District Judge.

(vii) Similar directions concerning the encryption of digital photographs and video clips will become effective on receipt of the SOP by District Judge from the registry of the High Court.

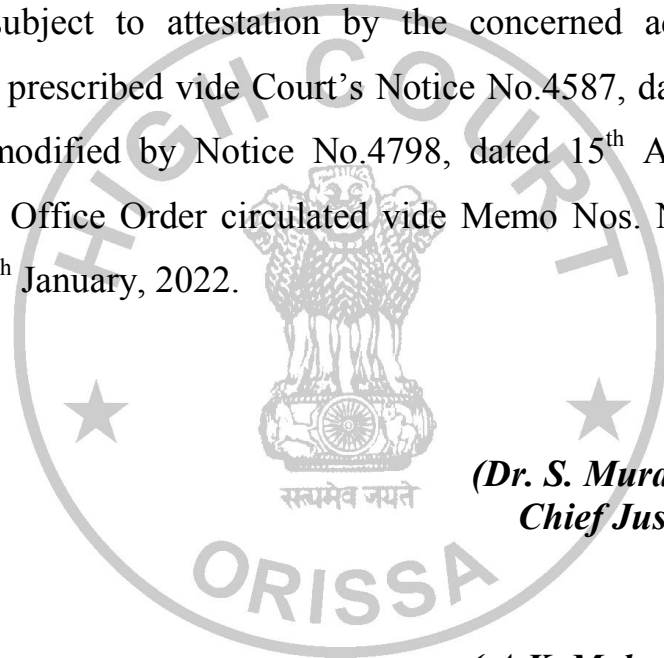
Directions specific to the case on hand

18. Specific to the case on hand, the Court directs as under:

- (i) All pending applications before the Courts as indicated in Annexure-A/3 shall positively be disposed of within three months from today and in any event not later than 2nd May, 2022.
- (ii) Intimation will be sent by each of the concerned Courts before whom the applications are placed as indicated in Annexure-A/3, once in a fortnight beginning 15th February, 2022 to the Registrar General of this Court enclosing the orders passed in the pending applications permitting disposal of the seized properties.
- (iii) The Registry of the High Court is requested to circulate to all the District Judges the detailed SoP to be followed by each of the Magistrates.
- (iv) The Secretary, OSLSA and the Director General of Police (DGP) are directed to co-ordinate with the concerned District Courts and the Superintendents of Police respectively to ensure strict compliance with this order.

- (v) This case shall be listed for further directions on 4th April, 2022.
- (vi) A certified copy of this order shall be communicated forthwith by the Registry to the Secretary OSLSA and the DGP for compliance.

19. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos. No.514 and 515 dated 7th January, 2022.



(Dr. S. Muralidhar)
Chief Justice

(A.K. Mohapatra)
Judge

S.K. Guin