



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 6341/2020

Ramnath S/o Shriprasad, Aged About 35 Years, R/o Village
Badarpur, Police Station Sadar, Distt. Dholpur Raj.

----Petitioner

Versus

State Of Rajasthan, Through P.p.

----Respondent

For Petitioner(s) : Mr. Govind Upadhyay
For Respondent(s) : Mr. Ramesh Choudhary, PP

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

16/12/2020

Learned counsel for the petitioner(s) submits that the police seized the vehicle(s) mentioning it to be under Section 38 of the Rajasthan Police Act, 2007 (hereinafter referred to as "the Act") treating it as unclaimed property, learned Magistrate has rejected the application filed by the petitioner(s) seeking possession of the said vehicle on the ground that it is unclaimed vehicle(s).

Learned counsel for the petitioner(s) submits that the petitioner(s) is a registered owner of the vehicle(s) and therefore, the proceedings under Section 38 of the Act could not have been undertaken and even if, the same was undertaken; once, the learned Magistrate has come to knowledge that the vehicle is duly registered and the registered owner is before it for claiming the same, there was no occasion for not releasing the said vehicle.

It is also submitted that the provisions of Section 38 of the Act cannot be misused in such a manner to deprive the



petitioner(s) of its ownership and title of the vehicle(s), which has been seized wrongfully by the police.

I have considered the submissions as above.

A bare look at the provisions of Section 38 of the Act would be relevant, hence, the same is quoted as under:

“38. Police officers to take charge of unclaimed property – (1) It shall be the duty of every police

officer to take charge of unclaimed property, and to furnish an inventory thereof to the Police Station having jurisdiction.

(2) The manner of disposal of such property shall be such as may be prescribed.

Explanation:- For the purpose of this section “property” shall mean any movable property, money or valuable security.”

Thus, it is at the stage when the vehicle(s) is seized, that property may be treated as unclaimed property. However, once an application has been filed before the Court informing about the vehicle being an unregistered ownership of the claimant and he claims the said property, the provisions of Section 38 of the Act would automatically cease to apply and the learned Magistrate could not have avoided the provisions of Section 457 Cr.P.C. for release of the vehicle(s). Thus, the order(s) impugned herein passed by the learned Magistrate to the said effect is wholly misconceived the provisions aforesaid and is accordingly set aside.

The law regarding release of the vehicle has been explained by the Apex Court in detail in the case of *Sunderbhai Ambalal Desai & Ors. Versus State of Gujarat: (2002) 10 SCC 283*, and by this Court also in the case of S.B. Criminal Misc. Petition No. **2723/2019: Asharam Versus State of Rajasthan**, decided on 3.2.2020 along with other connected petitions.



Accordingly, this criminal misc. petition is allowed and the respective vehicle having registration No.RJ-11-RB-0593 (Tractor with Trolley), involved in these matters shall be released on the following terms:

a) The concerned Police Station shall release the offending vehicle(s) to the person(s), who is the registered owner(s) of the vehicle(s) alone.

b) A personal security of an amount of Rs.1,00,000/-each to the satisfaction of the concerned Court to which the concerned Police Station is attached, shall be submitted for the purpose of release of the vehicle(s).

c) The petitioner(s) shall furnish the photographs of the vehicle(s) showing its number and colour etc.

d). At the time of release, the petitioner(s) shall also give an undertaking to the effect that vehicle(s) shall not be used for any illegal purpose and if so found, the concerned owner shall be personally liable.

(SANJEEV PRAKASH SHARMA),J

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