

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Misc. Petition No.735 of 2020**

Indra Kumar, S/o Hukumchand Jain, aged about 57 years, R/o High School Road, Jagdalpur, District Bastar (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Inspector General of Police, Bastar Range, Jagdalpur (C.G.)
 2. Dy. Inspector General of Police, Bastar Range, Jagdalpur, District Bastar (C.G.)
 3. Superintendent of Police, District Bastar, Jagdalpur (C.G.)
 4. Station House Officer, Kotwali, Jagdalpur, District Bastar (C.G.)
- Respondents

For Petitioner: Mrs. Renu Kochar, Advocate.

For Respondents / State: -

Mr. Animesh Tiwari, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/02/2021

1. The petitioner was charge-sheeted for offence punishable under Sections 304B & 498A of the IPC and Sections 3 & 4 of the Dowry Prohibition Act and convicted by the jurisdictional criminal court and ultimately, acquitted by this Court vide judgment dated 3-5-2017 passed in Cr.A.No.805/2013 vide Annexure P-1. Thereafter, he applied for releasing the property seized in the said crime and kept in the malkhana of Police Station Kotwali, Jagdalpur. The 1st Additional Sessions Judge by order dated 10-1-2019 directed the Station In-charge, Police Station City Kotwali, Jagdalpur to give the property mentioned in the said order to the petitioner and file report to that effect,



however, the Station House Officer submitted report to the said Court on 15-1-2019 vide Annexure P-3 that the property seized in Crime No.268/1992 was misappropriated by Head Constable Sukal Singh Gawde against whom Crime No.37/1997 for offence punishable under Section 409 read with Section 34 of the IPC has been registered and he is being prosecuted. The petitioner again made application to the said Court on 18-1-2019 that as per the order of the Court dated 10-1-2019, he is entitled for the property, but the property is missing and not available in the Police Station. However, this time, the learned Additional Sessions Judge by its order dated 28-1-2020 (Annexure P-11) held that as per the report submitted by the Station House Officer, Police Station Kotwali, Jagdalpur, the property which was kept in the malkhana has been misappropriated by the In-charge of malkhana, therefore, the petitioner is at liberty to take proper steps before in accordance with law by filing application before the higher officer of the concerned Department or before the State Government. The said order dated 28-1-2020 passed by the 1st Additional Sessions Judge, Jagdalpur has been called in question in this petition under Section 482 of the CrPC.

2. Mrs. Renu Kochar, learned counsel appearing for the petitioner, submits that it is the duty of the Court to pass order with regard to the property which has been seized and once the property is stolen, lost or destroyed; the Court has power to order payment of the value of the property. She would rely upon the decision of the Supreme Court in the matter of **Smt. Basava Kom Dyamogouda Patil v. State of Mysore and another**¹ in support of

1 AIR 1977 SC 1749



her contention.

3. On the other hand, Mr. Animesh Tiwari, learned State counsel, submits that it has clearly been informed to the Court that the property has been stolen / misappropriated by the malkhana in-charge and Crime No.37/1997 for that offence punishable under Section 409 read with Section 34 of the IPC has been registered against the said malkhana in-charge.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
5. It is not in dispute that pursuant to the acquittal of the petitioner, the learned Additional Sessions Judge has directed for returning the property to the petitioner, but since the property is said to have been misappropriated by the malkhana in-charge, the learned Additional Sessions Judge by order dated 28-1-2020 held as under: -

28/01/2020

आवेदक इंदर चौधरी स्वतः उपस्थित।

थाना प्रभारी कोतवाली जगदलपुर से प्रतिवेदन प्राप्त। प्रतिवेदन में यह उल्लेख किया गया है कि प्र.क्र.-63/95 (थाना कोतवाली जगदलपुर के अप.क्र.-268/92) शासन विरुद्ध इन्द्र चौधरी व अन्य, के प्रकरण में जप्त सम्पत्ति को सुपुर्ददार को देने हेतु थाना कोतवाली के मालखाना रजिस्टर का अवलोकन किया गया। सन् 1997 में थाना कोतवाली जगदलपुर का तत्कालीन मालखाना प्रभारी प्रधान आरक्षक सुकाल सिंह गावड़े द्वारा मालखाना में रखे जप्त सम्पत्ति सोना, चांदी तथा नगद रकम गबन करना पाये जाने पर उसके विरुद्ध अपराध क्रमांक-37/07, धारा-409/34 भा.द.वि. का अपराध पंजीबद्ध कर अभियोग पत्र न्यायालय में पेश किया गया है। मालखाना के सत्यापित रजिस्टर में उक्त प्रकरण का जप्त संपत्ति, वर्तमान में थाना कोतवाली के मालखाना में, नहीं होना पाया गया है। उपरोक्त परिस्थितियों में पुनः सुपुर्दनामा के संबंध में और कोई भी आदेश पारित किया जाना उचित



प्रतीत नहीं हो रहा है। आवेदक/सुपुर्ददार इन्द्र कुमार चौधरी प्रश्नगत संपत्तियों की प्राप्ति बावत् विधि अनुसार कार्यवाही किये जाने बावत् संबंधित विभाग के उच्चाधिकारियों को अथवा शासन को आवेदन करने हेतु स्वतंत्र है।

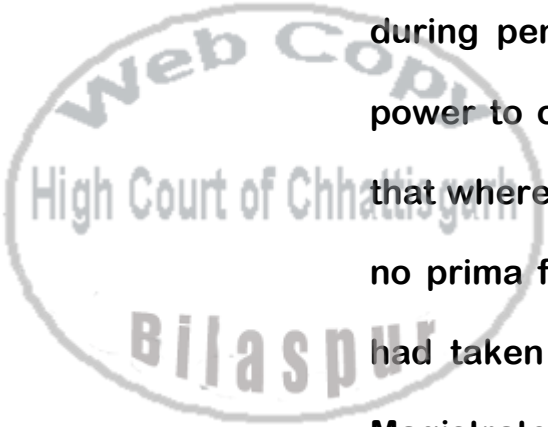
प्रकरण समाप्त। परिणाम दर्ज कर नियत अवधि में अभिलेखागार में जमा हो।

सही/—
(डी०एन० भगत)
प्रथम अपर सत्र न्यायाधीश
जगदलपुर

6. The Supreme Court in **Smt. Basava Kom Dyamogouda Patil**

(supra) dealing with Section 517 of the Code of Criminal Procedure, 1898 (old Code) i.e. property lost or destroyed during pendency of trial, has clearly held that the Court has power to order payment of value of the property by observing 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. It has been held as under: -

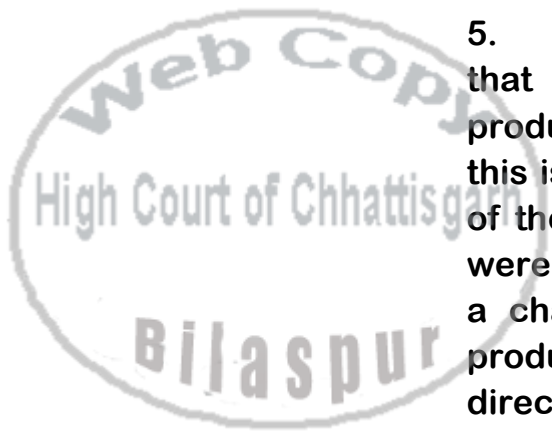
“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. 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.

5. Coming now to the decision of the High Court that the articles in question were never actually produced by the police before the Court, we find that this is factually incorrect. It appears from the finding of the High Court that immediately after the articles were recovered by the police and the police submitted a charge-sheet to the Chief Judicial Magistrate, it produced the articles before the Court, but the Court directed the Sub-Inspector to retain the property until the same is verified and valued by a goldsmith for which the Court moved the higher authorities for sanction of necessary funds. The Sub-Inspector was also directed to bring the goldsmith. In these circumstances, the Sub-Inspector took back the articles and kept them in the Guard Room of the police station. It would thus appear that the articles were actually produced before the Court but were retained by the Sub-Inspector under the directions of the Court. A production before the Court does not mean physical custody or possession by the Court but includes even control exercised by the Court by passing an order regarding the custody of the articles. In the instant case when once the Magistrate, after having been informed that the articles were produced before the Court, directed the Sub-Inspector to keep them with him in safe custody, to get them verified and valued by a goldsmith, the articles were undoubtedly produced before the Court and became custodia legis.





6. It is common ground that these articles belonged to the complainant/ appellant and had been stolen from her house. It is, therefore, clear that the articles were the subject-matter of an offence. This fact, therefore, is sufficient to clothe the Magistrate with the power to pass an order for return of the property. 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. We do not agree with the view of the High Court that once the articles are not available with the Court, the Court has no power to do anything in the matter and is utterly helpless.”

7. The principle of law laid down in **Smt. Basava Kom Dyamogouda Patil** (supra) was followed subsequently by their Lordships of the Supreme Court in the matter of **Inter Continental Agencies Pvt. Ltd. v. Amin Chand Khanna and another**² in which it was held that the property being custodia legis, owner is entitled to its delivery, and if property is lost while in court's custody, he is entitled to its value. It was observed as under: -

“2. ... When the rightful claimant applied to the court for possession of the buses the court could not simply shrug its shoulders and direct him to go to a civil court because both the Official Receivers disclaimed that they were in possession of the buses. In such a situation it was the duty of the court to probe into the matter, make a full enquiry, and trace the whereabouts of the buses. If the buses could not be so traced or if the buses could not be delivered to the owner for any reason the court should direct the culpable party to pay the value of the vehicles to the appellant. It is elementary that no one shall be prejudiced for the act of the court '*actus curiae neminem gravabit*' (the act of the court harms no one). The orders of the subordinate courts are therefore, set aside and the matter is remitted to the learned Judicial Magistrate 1st Class, Amritsar, who is directed to dispose of the case in accordance with the law



after making full enquiry as suggested by us.”

8. Reverting to the facts of the instant case, in the light of the principle of law laid down in the judgment of the Supreme Court, it is quite vivid that the property seized from the possession of the claimant and articles were subject-matter of offence; the jurisdictional criminal court is having jurisdiction to pass order for return of property and where the property is stolen / lost / destroyed and in absence of due diligence by the State and its authorities to protect the property of the petitioner, the said court is empowered to order payment of value of the property.
9. In view of the above, the order of the learned 1st Additional Sessions Judge, Jagdalpur directing the petitioner to approach the higher authority of the Department concerned or the State Government is absolutely without authority of law. Accordingly, the impugned order dated 28.01.2020 is set aside and the matter is remitted to the learned Additional Sessions Judge for hearing on the petitioner's application afresh in accordance with law after making full enquiry in the light of the decisions of the Supreme Court in Smt. Basava Kom Dyamogouda Patil (supra) and Inter Continental Agencies Pvt. Ltd. (supra), after affording opportunity of hearing to both the parties. The State of Chhattisgarh is obliged to exercise due diligence in keeping the seized property in safe condition till conclusion of trial / appeal, etc. in order to ensure return of property if exigency so arises upon the orders of the criminal Court.
10. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge



HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.735 of 2020

Indra Kumar

Versus

State of Chhattisgarh and others

Head Note

State is obliged to exercise due diligence in keeping the seized property in safe condition till conclusion of trial / appeal.

राज्य का यह कर्तव्य है कि वह विचारण / अपील के निराकरण तक, जब्त किये गए संपत्ति को सुरक्षित रखने हेतु सम्यक तत्परता बरतें।

