

CrI.RC. (MD) No. 488 of 2011

N. Devathathuvam v. State

2011 SCC OnLine Mad 1470

(BEFORE S. PALANIVELU, J.)

N. Devathathuvam Petitioner

v.

The State represented by The Sub-Inspector of Police,
Virudhunagar Rural Police Station, Virudhunagar
Respondent

(Crime No. 50 of 2011)

For Petitioner... M/s. S.M. Anantha Murugan

For Respondent... Mr. P. Kandasamy Government Advocate (Crl.side)

CrI.RC. (MD) No. 488 of 2011

Decided on September 15, 2011

Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No. II, Virudhunagar, Virudhunagar District in Cr.M.P. No. 1442 of 2011 in Crime No. 50 of 2011 and quash the same and consequently direct the above said learned Judicial Magistrate to return the 155 bundles of crackers to the petitioner.

: ORDER

This Criminal Revision is preferred to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No. II, Virudhunagar, Virudhunagar District in Cr.M.P. No. 1442 of 2011 in Crime No. 50 of 2011 and quash the same and consequently direct the above said learned Judicial Magistrate to return the 155 bundles of crackers to the petitioner.

2. The petitioner is engaged in the business of fire works and crackers under the name and style of Subash Crackers. Her company is also registered with the Commercial Tax Officer, Palakkarai Circle II, Trichy-1, under the provisions of Tamil Nadu Value Added Tax Act, 2006. Her husband by name, Mohandoss, is managing the business. Her Tax Payer identification number is TIN-33673541969. Usually she purchases crackers from the manufacturers at Sivakasi and sells it at Trichy by converting them into gift boxes. She does not own any building at Trichy. Hence, she entered into a rental agreement with one S. Singaram who is the owner of the building and his son S. Manoharan is having explosive licence.

3. During the last year Deepavali season, she purchased crackers at Sivakasi and converted the same into gift boxes and made sales at Trichy. Since there was not much demand for crackers during the last season, lot of crackers and gift boxes were kept unsold and were retained at Trichy. In the meanwhile, the building which was used for crackers business came under repair. The owner of the building proposed to repair the building. Hence, she was compelled to vacate the building till the completion of repair work. So, she transferred the unsold crackers from her Trichy business place to Government approved godown at Sivakasi through her husband. While the crackers were taken through Virudhunagar town, the respondent police

waylaid the vehicle and registered a case against her husband in Crime No. 50 of 2011 under Sections 9(B)(1)(b) of the Explosives Act, seizing entire crackers by stating that her husband possessed the crackers without valid licence.

4. The petitioner's family is being run, out of the income earned from the above said business. She borrowed all the crackers only on credit basis. She also paid 12.5% taxes under the TNVAT Act, 2006. The seized 155 bundles of crackers were purchased only on payment of proper taxes. Her husband has not manufactured or possessed those crackers without valid licence. At the time of transfer she made a contract with Alagarsamy Parcel Services in LR No. 16401, dated 26.02.2011 and the crackers accompanied by Form JJ prescribed by the Tamil Nadu Value Added Tax Act and Rules.

5. The petitioner is the owner of 155 bundles of crackers which were seized by the police. If the crackers are not sold within the prescribed time from the date of manufacture, it will become obsolete. If the crackers were kept in open place, it will observe humidity from the atmosphere and become useless. Hence, it is necessary to return the crackers otherwise, she will be put to irreparable loss. She is ready to execute a bond to the satisfaction of the Court and abide by the conditions imposed. Hence, the Court may return the petitioner's 155 bundles of crackers seized from the petitioner's husband Mohandoss.

6. The Assistant Public Prosecutor before the Judicial Magistrate Court has preferred a reply in which he has stated that the investigation is in progress and it appears that the accused was in possession of cracker boxes without any valid licence and no licence was issued for the place where the crackers have stored and that the properties are required to be marked at the time of trial and hence, the petition has to be dismissed.

7. After hearing both sides, the learned Judicial Magistrate No. II, Virudhunagar, dismissed the application by observing that whether the petitioner is owner of the crackers is a matter to be decided only at the time of trial, that whether the place where the explosives were kept is not validly licenced and that the mode of disposal of property after conclusion of the trial will be determined at the result of the trial. Hence, the petitioner is before this Court with this revision.

8. It is argued that if the crackers/fireworks were not sold on the eve of ensuing Deepavali occasion, they could not be put to any use and the petitioner will incur much loss.

9. There would be no doubt that the petitioner is the owner of the fire works/crackers seized by the police. Her husband is the accused in this case who is said to have been in possession of the crackers. At this juncture, it is to be stated that the investigation in this case was over and the charge-sheet was also laid by the police on 27.02.2011 under Section 9-B(1)(b) of Explosives Act, before the Court below in which, he has been charged that he is punishable under the above said provision since he was storing the crackers in his house without valid permit.

10. The First Information Report goes to the effect that on a tip-off, the Inspector of Police of the respondent police station, proceeded to the house where the accused Mohandoss was residing and with his permission along with Police party, he searched the house and found 155 bundles containing crackers in the parcels at about 07.00 p.m. on 26.02.2011, that the accused admitted that he was keeping the said properties without valid licence and that all the properties were seized by the police under mahazar. The value of the crackers was assessed by the police at Rs. 3,00,000/-

. The recovery mahazar contains the particulars of crackers and fire works and the number of parcels in which they were kept.

11. It is the version of the petitioner that when the crackers were transported from Trichy to Sivakasi for safe custody, while at transit at Virudhunagar, the police seized the crackers. But, the respondent police say that they were stored in the house of the accused for which no licence was obtained. The truth of the matter has to be found out by the Court only at the time of final disposal of the main case. What the Court has to decide at this juncture is, whether the properties, namely, the crackers have to be entrusted to the petitioner pending the trial of the case for interim custody as per Section 451 Cr.P.C. which may be read for facility of reference:

"451. 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.

12. Perhaps at the very threshold it must be borne in mind that it is essentially a procedural provision that we are called upon to construe. The oft-repeated adage that the procedure is the handmaid of justice and intended to advance its course and not to obstruct the same is a sound canon of construction for provisions of this nature. Therefore, a somewhat liberal interpretation as against an overly strict one is inevitably called for.

13. If the property seized is a vehicle, Section 451 Cr.P.C. empowers the Court to pass appropriate orders with regard to a property. This power should be exercised expeditiously and judiciously as a quick action will not render the owner of the article to suffer because of its remaining unused or in some cases by its misappropriation and the Court or the police would also not be required to keep the article in safe custody till the disposal of the trial. If the property is a vehicle, the quick disposal is necessitated because it is of no use to keep such seized vehicle at the police station for a long period which would render into a junk and the machinery as well as body parts would be of no use for anybody.

14. In case, if any special statute contains a provision enabling the Court or the authority to deal with this aspect to direct confiscation or forfeiture of the case property at the end of the trial, or otherwise to be disposed, the best interest of both the parties would be served if it is kept in good and proper condition so that it may remain valuable, as it was at the initial stage and the party receiving it at last may receive the same in a good condition. If the property, whatever may be, is kept indefinitely under the custody of Court or the police, its utility and value would get lowered down and shall be of no use either for prosecution or for the defence.

15. The Oft-quoted decision of the Hon'ble Supreme Court on this point is reported in (2002) 10 SCC 283, *Sunderbhai Ambalal Desai v. State of Gujarat*, wherein Their Lordships have elaborately dealt with the subject and formulated guidelines to be followed by the Courts in the matter of disposal of property. The relevant portion in the judgement goes thus:

"5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as:

- (1) for the proper custody pending conclusion of the inquiry or trial;
 - (2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;
 - (3) if the property is subject to speedy and natural decay, to dispose of the same.
6. ...
7. In our view, the powers under Section 451 CrPC 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 panchnama before handing over possession of the 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."
16. The above said case was taken up again for a clarification as to the production of vehicle, and an order was passed by the Supreme Court which is reported in (2002) 10 SCC 290, *Sunderbhai Ambalal Desai v. State of Gujarat*, wherein, Their Lordships have made it clear that there may not be any necessity of producing the vehicle before the Court and the seizure report may be sufficient.
17. In 2009 1 MLJ (CrI.) 852, (*Gajendran v. State through Inspector of Police, Civil Supplies CID, Madurai*), K.N. Basha, J. has rendered a decision on the point following the above said decision in *Sunderbhai Ambalal Desai* case.
18. In yet another decision of this Court reported in (2011) 1 MLJ (CrI.) 191, (*Sundaram Finance Ltd., rep. By its Branch Manager, P. Vjayakumar v. State of Tamil Nadu, rep. by Inspector of Police, Kaveripattinam Police Station, Krishnagiri Taluk*), C.T. Selvam, J., referring and following the decision in *Sunderbhai Ambalal Desai* case supra and other cases, observed that this Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today and that in cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of proceeds in fixed deposits pending disposal of the case would be to the common good. If the property is subject to speedy and natural decay, the Court has enough power to order sale of the case property pending the conclusion of the trial or if it is otherwise expedient to do so under Section 451 of Cr.P.C.
19. Section 451 confers considerable powers upon the Court to act as per the circumstances available in a particular case.
20. Time and again the Hon'ble Supreme Court has been reiterating the principles and guidelines already settled, to be followed by the Courts in the matter of entrusting interim custody pending inquiry or trial. While dealing with the scope of power conferred on the Court for passing appropriate orders in the case of interim custody, a

Full Bench of the Hon'ble Supreme Court, in *Basavva Kom Dyamangouda Patil v. State of Mysore*, reported in AIR 1977 SC 1749: 1977 Cri.L.J. 1141: (1977) 4 SCC 358: 1977 SCC (Cri) 598, has held as follows:

"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 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."

The above said decision has been referred and followed in *Sunderbhai Ambalal Desai* case.

21. The Court should be very much concerned with the nature of the property, that is to say, when the same is subject to speedy or natural decay, it is incumbent upon it to pass appropriate orders as per law. Section 451 enables the Court to deal with such property by ordering it to be sold or otherwise disposed of after recording such evidence as it thinks necessary. The term "or otherwise disposed of" has got wider connotation. As far as recording of evidence as found in the section is concerned, it is within the discretion of the Court to decide whether any evidence has to be recorded. If any appropriate order could be passed in the absence of evidence, it can also be done by the Court. As per the view of this Court, the term "or otherwise disposed of" occurring in Section 451 confers much powers on the Court to dispose of the property which is subject to speedy and natural decay, as per the circumstances warrant. When the Court is given adequate powers under this Section, while the intent of the Legislature is gathered, it can pass proper orders imposing certain conditions which is appropriate in its view. When the intention of legislature is that it is within the domain of the Court to decide and pass suitable orders formulating certain conditions, the Court can act accordingly to preserve the rights of the parties with regard to the property and prevent the property to get deteriorated and also to render useless.

22. The fireworks/crackers can be treated to be the properties which are subject to speedy and natural decay. Hence, it is for the Court to decide what is to be done when it is dealing with the interim custody of such properties. When the Court is acting under Section 451 of the Code, it has also to bear in mind the relevant provisions in the concerned statute which provides for disposal of the property at the time of final disposal of the case. If the provisions of such statute provide for forfeiture or confiscation at the end of the trial on account of conviction of the accused, the Court has to make sufficient arrangements for future eventualities at the time of granting orders under Section 451 of the Code.

23. Section 10 of the Explosives Act, 1884, provides forfeiture of explosives or any

part of explosives in case if the accused were convicted. Section 10 of the Explosives Act, 1884, goes thus:

"10. Forfeiture of explosives.-When a person is convicted of an offence punishable under this Act or the rules made under this Act, the court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited."

24. In order to fulfil the statutory requirements as contained in the above said provision, necessary provision has to be made in the order under Section 451 of the Code by the Court. In case of any contingency, namely, conviction of the accused at the end of the trial, there shall be forfeiture of explosive or any part of it. In order to comply with such requirement, necessary conditions have to be imposed. In the considered view of this Court, to satisfy the ingredients of Section 10 of the Explosives Act, the value of the part of the explosive can be directed to be deposited into the Court by the owner, apart from execution of personal bond.

25. In a case decided by the Karnataka High Court in *Shamaladevi and Sukanya v. State of Karnataka* reported in ILR 1990 Kar 376: 1990 (3) Kar.L.J. 499, almost a similar set of facts were available and the Court imposed some conditions directing deposit of 25% of the value of the explosives after releasing 50Kgs of fireworks and 400 kgs of sparklers to the owners. As far as this case is concerned, there is no objection nor argument with respect to the quantity of the crackers to be possessed by the owner nor had it been specifically mentioned in the charge sheet too. In the above decision, earlier decisions of the Karnataka High Court, have been referred to, which are as follows:

(a) *State of Mysore v. Mohamed Jaffar*, 1966 (2) KLJ 91.

(b) *Mahapursha Durga Joglekar v. State of Karnataka*, 1977 (2) KLJ 463.

(c) *The State of Mysore v. Anthony*, 1971 CrI.L.J. 1638.

26. It is observed therein that if the material objects are of a perishable nature, to deal with them according to rules and in case they are sold, the sale proceeds of the material objects be credited to the criminal Court deposit.

27. The crackers/fireworks are perishable in nature and hence, it is bounden duty of the Court to direct to deposit the value of portion of them, besides directing the applicant to execute a bond for the total value with one surety. A mahazar has to be prepared at the time of granting interim custody of the crackers/fireworks which are available in custody and the same ought to be marked before the Court at the time of trial as per the decision of the Hon'ble Supreme Court.

28. A perusal of the mahazar prepared by police would show that there are as many as 155 bundles containing various categories of the crackers/fireworks. It is not practicable to photograph each and every category of the crackers/fireworks. Charge sheet has been laid. There is no scope for sending the crackers for chemical examination. Hence, samples need not be retained. In the mahazar prepared by the police, the value of the fireworks/crackers has been assessed at Rs. 3,00,000/-. Hence, suffice it to mark the mahazar containing the particulars of the objects at the time of trial.

29. In view of the Apex Court (*Basavva's case*), the object of the Code is that the

property should be restored to the original owner, after the necessity to retain it ceases. As for this case, further retention of property is not necessary.

30. Since the material objects in this case are in the nature of fireworks/crackers, it is not desirable to keep the article in custody either of the Court or of the police. If such properties are kept indefinitely or upto the period when the trial is completed, they may become useless by undergoing chemical reactions with the atmospheric components. Improper storage will lead to havoc. If necessary, at the time of final hearing of the case, the trial Court may record necessary evidence as to the nature of the property in detail.

31. In fine, the Criminal Revision Petition is allowed with the following conditions:

(i) The petitioner shall deposit Rs. 1,00,000/- (Rupees One lakh only) in cash into the credit of the case before the Court below from the date of receipt of a copy of this order. The said amount of Rs. 1,00,000/- shall be paid in four equal weekly instalments at the rate of Rs. 25,000/- per week.

(ii) The petitioner shall execute a bond for Rs. 3,00,000/- (Rupees three lakhs only) with one surety for the like sum to the satisfaction of the learned Judicial Magistrate No. II, Virudhunagar.

(iii) A mahazar containing the particulars of the crackers/fireworks shall be prepared at the time of production of solvency certificates and the same shall be marked at the time of trial in lieu of marking the material objects.

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