

(2003) 09 GAU CK 0027

Gauhati High Court**Case No:** Criminal Revision No. 537 of 2003

Bijoyananda Choudhury

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Sept. 18, 2003**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 451

Citation: (2004) 2 GLR 13 : (2003) 3 GLT 452**Hon'ble Judges:** A.H. Saikia, J**Bench:** Single Bench**Advocate:** G.K. Bhattacharya, P. Sharma and P.M. Chakraborty, for the Appellant; K. Monir, Public Prosecutor, for the Respondent**Final Decision:** Dismissed

Judgement

A.H. Saikia, J.

Heard Mr. G.K. Bhattacharyya learned Sr. counsel assisted by Mr. P. Sharma Ms. Chakraborty, learned counsel for the petitioner. Also heard Mr. K. Morir, PP, Assam for the opp.party. The Apex Court in [Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat](#), in dealing with the disposal of the property pending the trail u/s 451 Cr. PC, held in para 7 that the power under the said section be exercised expeditiously and judiciously because would serve purpose 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 trail. If necessary in detail, and

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

and accordingly ruled that the court should pass appropriate orders immediately and articles are not to be kept for a long time at police station, in any case, for more than 15 days to one month.

3. In the light of the above propositions of law, now let us notice the factual matrix of the criminal revision in hand. In the instant case in which the petitioner's prayer for custody of the vehicle bearing Registration No. AS-01-G-3313 (Tata Safari) has been rejected by the Addl. Chief Judicial Magistrate, Guwahati by his order dated 14.8.2003, the petitioner has stated that he on 29.7.2003 lodged an FIR with the officer-in-charge of Panbazar Police Station at Guwahati alleging inter-alia that on 28.7.2003 at about 6 am Sri Sumaanta Bhagwati with another Sri Rupanka Goswami came to his office situated at Dr. J.C. Das Road, Panbazar, for friendly visit, Therefore, they left his office at about 6.45 pm. Then Sri Sumaanta Bhagawati called him over phone that their vehicle had been punctured opposite to his office and requested the petitioner to give his vehicle bearing. No. AS-01- G 3313 (TATA SAFARI) to them as lift. After about 15 minute one of the staff of the petitioner, Sri Pabitra rushed to him and told that Sri Sugrib was shot. The petitioner immediately came down to the place of occurrence and found that Sri Sugrib was having bullet injury on his right heel. After enquiry the petitioner came to know that Sri Samanta Bhagawati had shot him alleging that he had punctured their vehicle for wrongfully parking it. He immediately brought the injured to M.M.C. Hospital at Panbazar and thereafter the injured was referred to G.M.C. Hospital, Bhangagarh, Guwahati. Accordingly the Panbazar PS case No. 166/03 u/s 326/307/34 IPC r/w Section 25(1)/27 Arms Act was registered. After registering the case, the police started investigation. During the course of investigation, the I/O of the case on 29.7.2003 has seized the petitioner's vehicle bearing No. AS-01/G-3313, Engine No. 49 FRQ 738413 Chesis No. 403001 FRQ 987719 which has been registered in the name of M/s. Purbanchal Banijsa Bikash, a proprietorial firm where the petitioner is the sole proprietor.

4. After such seizure, the petitioner on 12.8.2003 filed a petition in the Court of Chief Judicial Magistrate, Kamrup at Guwahati u/s 451 Cr. PC with a prayer to give custody of the said vehicle and the learned Magistrate after hearing all concerned called for a police report regarding the vehicle in hand fixing 14.8.2003 On 14.8.2003, the I/o of the case, submitted a report to the learned Magistrate stating inter-alia- that during investigation it was learnt that the vehicle No. AS-01/G-3313 belonged to Mr. Bijoyananda Choudhury @ Dudul Choudhury, being the petitioner of M/s. Purbanchal Banijsa Bikash and as such he was the owner of the vehicle. Accordingly he made a prayer that Mr. Bijoyananda Choudhury of M/s. Purbanchal Banijsa Bikash be allowed to take Zimma of the vehicle (Annexure- V to the petition). As 14.8.2003 was the date fixed for police report, the petition filed by the petitioner

on 12.8.2003 came up for hearing before the learned Additional C.J.M (K), Guwahati alongwith the police report and the learned Magistrate vide impugned order dated 14-8-2003 rejected the petition filed by the petitioner on the ground that M/s. Purbanchal had not submitted any document in support of his claim. In the order it was further stated that the vehicle in question was involved in a serious crime u/s 326/307/34 IPC r/w Section 25/27 of the Arms Act.

5. It has been submitted by Mr. Bhattacharyya, learned Sr. counsel that from the date of seizure of the vehicle in question the same has been kept in the Panbazar Police Station premises in an open space which is still lying in the same condition and if the custody of the vehicle is not given to the petitioner who is the absolute owner of the said vehicle, he will suffer irreparable loss and injury because the vehicle would be damaged due to its exposure to the vagaries of nature.

6. I have carefully examined the impugned order. On close scrutiny of the same as well as having regard to the above cited judicial pronouncement it appears that though the vehicle has been registered in the name of M/s. Purbabanchal Baniya Bikash, the proprietor of the said firm has been named as Sri Bijoyananda Choudhury, the petitioner as evident from the police report dated 14.8.2003 and as such the petitioner seems to be owner of the vehicle and accordingly the petitioner has made out a prima facie case for his entitlement to the interim custody of the vehicle.

7. That being so, this criminal revision petition stands disposed of with a direction that the interim custody of the vehicle in question i.e., vehicle bearing registration No. AS-01-G-3313 (Tata Safari). During the pendency of the trial of Panbazar PS case No. 166/03, be given to the petitioner immediately on condition that the said vehicle shall be produced before the court as and when necessary and during the pendency of the case the said vehicle other person or persons.

8. For the foregoing reasons and observations, this criminal revision stands allowed.