

2005 PLRonline 0101
(ID 212801)
PUNJAB AND HARYANA HIGH COURT
Before: Justice Rajive Bhalla.
Canara Bank v. State of Punjab
Criminal Misc No. 40857-M of 2004.
21.9.2005.

Criminal Procedure Code, Section 451 - Permission to sell - To decline permission to sell on the sole ground, that the property is case property would be a negation of the provisions of Section 451 of the Criminal Procedure Code - The property being case property, is no doubt a relevant consideration but except where facts and circumstances of a case so warrant cannot be a sole circumstance, to decline permission to sell - Each case must be decided on its own peculiar facts and circumstances. [Para 10]

Criminal Procedure Code, 1973 (2 of 1974), Section 451 - Superdari - Sale - Court is empowered to, if the property ".....is subject to speedy and natural decay or if it is otherwise expedient so to do.....," order its sale or disposal - For this purpose, the Court may if it deems appropriate, record such evidence as it thinks necessary - The words.....or it is otherwise expedient so to do so.....succeeding the words...." speedy and natural decay....." are not to be read *edjusdem generis* to the words "speedy and natural decay." - The use of the word expedient confers a discretion upon a Court to order sale of case property other than property subject to speedy and natural decay, provided the Court records a finding that it is expedient to do so subject to such terms and conditions as the Court may deem appropriate - This power is to be exercised judiciously and depending upon the facts and circumstances of each case. [Para 9]

Criminal Procedure Code, 1973 (2 of 1974), Section 451 - Superdari - Sale - Banks/ Financers application for permission to sell the tractor could not have been declined on the sole ground and that it was case property - A tractor is an automobile consisting of mechanical and rubber parts, which by their nature are subject to natural decay - Release of tractor to bank is of no use to the Bank and is lying idle and would soon be reduced to junk - The sale of the tractor would benefit both the bank and the accused - Bank would be able to recover a part of the loan advanced and the civil liability of the accused would stand correspondingly reduced - Even though the tractor is a case property expediency of the situation demands that the bank be permitted to sell the tractor subject to certain terms and conditions.

- (a) the sale proceeds of the tractor shall be deposited with the trial Court and released to such party as the trial Court may deem appropriate, upon the conclusion of the trial;**
- (b) the documents of sale, shall incorporate the fact that the tractor is case property and is required to be produced before the trial Court as and when so directed. The purchaser of the tractor would file an undertaking before the trial Court, to physically produce the tractor as and when so directed by the trial Court;**
- (c) the purchaser of the tractor shall also furnish a security equal to the amount of security furnished by the bank;**
- (d) the purchaser of the Tractor shall not alienate the tractor any further, without prior permission of the trial Court; and**
- (e) the transfer of ownership, shall be subject to such orders that the trial**

Court or any other Court may pass on conclusion of trial.

(f) all terms and conditions already imposed, at the time of release on sapurdari shall remain in force.

[Para 11, 12]

For the Petitioner :- Mrs. Mukul Aggarwal, Advocate. For the Respondent No. 1. :- Mr. B.S. Baath, AAG, Punjab. For the Respondent No. 2. :- None.

JUDGMENT

Rajive Bhalla, J. – Prayer in this petition filed under Section 482 of the Code of Criminal Procedure is for setting aside the orders dated 12.2.2004 (Annexure P-4) and 16.7.2004 (Annexure P-6) passed by learned Sub Divisional Judicial Magistrate, Baba Bakala and the learned Additional Sessions Judge, Amritsar, declining permission to the petitioner bank to sell the tractor in dispute, which tractor has been entrusted to the bank, pursuant to an order passed under Section 451 of the Criminal Procedure Code.

2. A brief factual narrative of the facts would be appropriate.

3. The petitioner, namely Canara Bank, a Nationalised Bank, granted a loan of Rs. 3,90,000/- to one Lakhwider Singh son of Karnail Singh, for the purchase of a tractor. Subsequently, it was discovered that security for the loan, namely the revenue record was fabricated. Consequently, an FIR No. 8 dated 9.1.2004 under sections 420, 466, 467, 468, 469, 471, and 120B of the Indian Penal Code was registered at Police Station Beas, District Majithia. During the course of investigation, the tractor, Solenika – 750, financed by the Bank was seized by the police. An application, filed by Bank for release of the tractor on sapurdari, was allowed by the Sub Divisional Judicial Magistrate, Baba Bakala vide order dated 5.2.2004, holding therein that the bank was the true owner of the tractor. While releasing the tractor on sapurdari, the bank was required to furnish one surety in the sum of Rs. 6,00,000/- and also file an undertaking that it would not alter its identification marks, name plate etc. and would not dispose of the said vehicle, without the prior permission of the Court. The operative part of the order reads as follows :-

“As such, the tractor in question is ordered to be released on sapurdari subject to furnishing sapurdari bonds in the sum of Rs. 6,00,000/-, with one surety in the like amount undertaking that they will not change its identification marks, name plate etc. and will not dispose of the vehicle without prior permission of the Court. He will produce the vehicle in question on each and every date of hearing.”

4. On 12.2.2004, the petitioner bank filed an application for permission to sell the tractor. Vide order dated 12.2.2004 the said application was dismissed on the ground that the tractor was released with a specific direction to produce the same on each and every date of hearing of the case and not to alienate it during the pendency of the case. The petitioner filed a revision impugning the afore-mentioned order. Vide order dated 16.7.2004, the Revisional Court dismissed the revision holding that as the tractor, in question, was case property and an appropriate order for its release had already been passed, permission to sell the tractor could not be granted.

5. Counsel for the petitioner contends that even though the tractor is case property, it was released, to the petitioner, vide order dated 5.2.2004, subject to conditions one being : that it would not be disposed of without prior permission of the Court; the Court was required to consider the feasibility of granting permission to sell. The application and the revision have been dismissed on the short ground that the tractor is case property, and required to be produced on each and every date of hearing. The Courts have ignored the provisions of Sections 451 of the Criminal Procedure Code and have proceeded to decide the application, as if case property cannot be sold in any eventuality. Section 451 of the Criminal Procedure Code envisages sale of case property and does not confine the powers of a Court, regarding sale of property only to goods subject to speedy and natural decay. It empowers the Court

to dispose of case property, not subject to speedy and natural decay, provided the Court records a finding that it is expedient to do so. It is further contended that a tractor, may not be a perishable item but being a machine is subject to natural decay. It comprises of rubber and mechanical parts which if not used, serviced, repaired and replaced regularly, would turn the tractor into junk, thus causing loss to the bank and also to accused. The tractor is of no use to the Bank. If sale is permitted, it would enable the bank to recover a part of the loan advanced and would also reduce the accused's (respondent No. 2) civil liability. It is further contended that the bank is ready to deposit the sale proceeds before the trial Court, release whereof would be subject to the such orders as the trial Court may pass.

6. Counsel for the State of Punjab, on the other hand, contends that the orders passed by the learned Courts below are legal and valid. Case property cannot be ordered to be sold as it is a substantial piece of evidence, relating to the commission of an offense. Its sale would prevent the prosecution from producing the tractor before the Court at the time of adducing evidence. Even otherwise, the provisions of Section 451 of the Criminal Procedure Code relate to perishable goods, subject to decay and a tractor not being perishable the Courts below rightly declined to sell the tractor.

7-8. I have the learned counsel for the parties and perused the record. Section 451 of the Criminal Procedure Code reads as under : -

"Section 451. Order for custody and disposal of property pending trial in certain cases. - When any property is produced before any Criminal Court during an 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."

9. When any property is produced before a Criminal Court, during any inquiry or trial and in case a prayer is made for sale thereof, the Court is empowered to, if the property ".....is subject to speedy and natural decay or if it is otherwise expedient so to do.....," order its sale or disposal. For this purpose, the Court may if it deems appropriate, record such evidence as it thinks necessary. The words.....or it is otherwise expedient so to do so.....succeeding the words...." speedy and natural decay....." are not to be read *edjusdem generis* to the words "speedy and natural decay." The use of the word expedient confers a discretion upon a Court to order sale of case property other than property subject to speedy and natural decay, provided the Court records a finding that it is expedient to do so subject to such terms and conditions as the Court may deem appropriate. This power is to be exercised judiciously and depending upon the facts and circumstances of each case.

10. Invariably, property brought before a Court during the course of an inquiry or a trial would be case property and therefore, to decline permission to sell on the sole ground, that the property is case property would be a negation of the provisions of Section 451 of the Criminal Procedure Code The property being case property, is no doubt a relevant consideration but except where facts and circumstances of a case so warrant cannot be a sole circumstance, to decline permission to sell. Each case must be decided on its own peculiar facts and circumstances.

Applying the afore-mentioned principles of law, as contained in Section 451 of the Criminal Procedure Code to the facts and circumstances of the present case, I am of the considered view that the application for permission to sell the tractor could not have been declined on the sole ground and that it was case property.

11. A tractor is an automobile consisting of mechanical and rubber parts, which by their nature are subject to natural decay. Though the tractor has been released to the bank vide order of the Judicial Magistrate 1st Class dated 5.2.2004, it is of no use to the Bank and is

lying idle. It would soon be reduced to junk. The sale of the tractor would benefit both the bank and the accused. The bank would be able to recover a part of the loan advanced and the civil liability of the accused would stand correspondingly reduced. In my considered opinion, in the facts and circumstances of the present case, even though the tractor is a case property expediency of the situation demands that the bank be permitted to sell the tractor subject to certain terms and conditions.

12. Consequently, the order dated 5.2.2004 (Annexure P-2) and the order dated 12.2.2004 (Annexure P-4) are set aside and permission is granted to the petitioner bank to sell the tractor subject to the following terms and conditions : -

- (a) the sale proceeds of the tractor shall be deposited with the trial Court and released to such party as the trial Court may deem appropriate, upon the conclusion of the trial;
- (b) the documents of sale, shall incorporate the fact that the tractor is case property and is required to be produced before the trial Court as and when so directed. The purchaser of the tractor would file an undertaking before the trial Court, to physically produce the tractor as and when so directed by the trial Court;
- (c) the purchaser of the tractor shall also furnish a security equal to the amount of security furnished by the bank;
- (d) the purchaser of the Tractor shall not alienate the tractor any further, without prior permission of the trial Court; and
- (e) the transfer of ownership, shall be subject to such orders that the trial Court or any other Court may pass on conclusion of trial.
- (f) all terms and conditions already imposed, at the time of release on sapurdari shall remain in force.

13. In view of what has been stated above, the present petition is allowed in terms indicated above.

Petition allowed.