

**Present**

*Mr. Justice A.S.M. Abdul Mobin*

&

*Mr. Justice Md. Mahmud Hassan Talukder*

**Criminal Miscellaneous Case No.67585 of 2023.**

Nurul Amin.....Petitioner.

Vs.

The state.....Opposite Party.

Ms. Moslema Banu, Advocate

For the petitioner.

Ms. Samira Tarenum Rabeya, D.A.G.with

Ms. Shamsun Nahar, AAG with

Mr. Mohammad Akter Hossain, AAG

For the opposite party.

Judgment on: 22.02.2024.

**A.S.M.ABDUL MOBIN,J.**

This Rule has been issued calling upon the opposite party to show cause as to why the judgment and order dated 26.07.2023 passed by the learned Sessions Judge, Cumilla in Criminal Revision No. 443 of 2023 rejecting the revision and upholding the Order dated 10.07.2023 passed by the learned Senior Judicial Magistrate, Cognizance Court No.2, Brahmanpara, Cumilla in G.R. Case No. 64 of 2023 arising out of Brahmanpara Police Station Case No. 02 dated 03.03.2023 under sections 170/ 171/ 385/ 386/ 411 of the Penal Code should not be quashed

and/or pass such other or further order or orders should not be passed as to this Court may seem fit and proper.

The learned Sessions Judge, Cumilla by the impugned judgment and order upheld the order dated 10.07.2023 passed by the learned Magistrate rejecting the prayer of the owner petitioner for taking the seized private car and three CNG Auto Rickshaw in his jimma.

Facts relevant for disposal of the rule are that Md. Omar Faruk, informant lodged an FIR with Brahmanpara Police Station, Cumilla on 03.03.2023 alleging *inter-alia* that while he was coming by a pickup loaded with 60(sixty) sacks of sugar and when reached in front of a brickfield of one Ershad Miah at about 12:00 am to 1:00 am on 27.02.2023, the accused named in the FIR along with 3/4 other unknown persons in uniform claiming themselves to be BGB personnel intercepted his vehicle and he and his driver were forced to get down from the vehicle.

Thereafter, they went away with his pickup loaded with sugar from the scene. It is alleged that the accused demanded TK.1,00,000/-(one lac) for return of his pickup and 60 sacks of sugar. Despite payment of Tk. 90,000/- they did not return the stolen goods. He then lodged a complaint to RAB-11, CPC-2, Saktola, Cumilla. Pursuant to his complaint a patrol team of RAB arrested the accused named at serial Nos. 1 and 2 in the FIR and recovered cash money, one private car, three old CNG auto rickshaw, one old pickup and other files and documents relating to the said vehicles. The informant, stating the above facts, lodged the first information report(FIR). On the basis of that FIR, the case was registered.

The case was investigated and charge sheet was submitted against the accused. Afterwards, the Investigating Officer submitted 02(two) reports regarding ownership of the seized articles vide reports dated 05.07.2023(Annexures- D and D-1 to

the application). After submission of the aforesaid two reports, the petitioner claiming himself to be owner, filed an application before the learned Senior Judicial Magistrate, Cognizance Court No.2, Cumilla for taking the seized Private Case and three CNG Auto Rickshaw in his jimma. But the prayer was rejected by the learned Senior Judicial Magistrate, Cumilla on 10.07.2023. Against that order, the petitioner filed Criminal Revision No. 443 of 2023 before the learned Sessions Judge, Cumilla and the learned Sessions Judge vide his order dated 26.07.2023 rejected the revision and upheld the order dated 10.07.2023 passed by the learned Magistrate rejecting the prayer for taking seized articles in his jimma.

Thereafter, the accused petitioner filed this application under section 561A of the Code of Criminal Procedure before this Court and obtained the instant rule.

Ms. Moslema Banu, the learned Advocate appearing on behalf of the petitioner submits that the petitioner is the owner of the seized articles which are kept in open place in the compound of the police station and it is going to get rusted away for want of proper care. Referring to the reports of the investigating officer she submits that the petitioner is the owner of vehicles and other articles but the Court below did not consider the same and as such, the Court below failed to apply judicial mind while rejecting the prayer. She also submits that there is no certainty as to when the trial of the case will be concluded and if the vehicles and other articles are allowed to be kept in the police station, the same will be damaged and ruined due to lack of proper care of the same and as such, the petitioner being the owner is ready to furnish all sorts of surety to take the aforesaid seized vehicles and other articles in his jimma. Hence, she prays for making the rule

absolute with a direction to handover the seized vehicle in his favour.

On the other hand, the learned Deputy Attorney General opposes the rule.

We have considered the submissions of the learned advocates, perused the application and all other relevant papers annexed thereto. It appears from Annexure-D and D-1 to the application that the petitioner has been shown to be owner of the aforesaid seized vehicles. But, the learned Magistrate as well as the learned Sessions Judge rejected the prayer for taking the aforesaid seized vehicles in his jimma on the ground that the seized vehicles being alamat of the case should not be handed over till disposal of the case. But, if the seized vehicles are damaged, the petitioner i.e. owner of the vehicles shall suffer loss and injury and as such, the prayer for taking the seized private car and CNG Auto Rickshaw in his jimma should be allowed for ends of justice.

Accordingly, we find merit in this rule.

In the result, the rule is made absolute. The judgment and order dated 26.07.2023 passed by the learned Sessions Judge, Cumilla in Criminal Revision No. 443 of 2023 is hereby quashed. The learned Senior Judicial Magistrate, Cognizance Court No. 02, Brahmanpara, Cumilla is directed to allow the petitioner being owner to take the seized private Car and three CNG Auto Rickshaw in his jimma on furnishing sufficient security to the satisfaction of the learned Magistrate in G.R. Case No. 64 of 2023 arising out of Brahmanpara Police Station Case No. 02 dated 03.03.2023.

Communicate this order to the concerned court at once.

**MD. MAHMUD HASSAN TALUKDER,J.**

I agree.