



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV. No.446 of 2021

***Okil Ahamad @ Wakil
Ahamad***

...

Petitioner

Mr. D.K. Mohapatra, Advocate

-versus-

State of Odisha

...

Opposite Party

,

Mr. C.R. Swain, AGA

CORAM: JUSTICE V. NARASINGH

ORDER

17.03.2026

Order No.

05. 1. Pursuant to the order of this Court dated 19.02.2026, a report dated 11.03.2026 has been received from the learned J.M.F.C.(Rural), Sundargarh. For convenience of reference the said report is extracted hereunder;

"xxx xxx xxx

.....On perusal of the case diary present in the case record it is seen that during the course of investigation on 29.06.2007 at about 4 A.M a truck bearing Regd. No. OR-23-7151 loaded with different types of scrap materials and some railway properties was seized in presence of witnesses. On perusal of the seizure list present in the case record it is seen that truck bearing Regd. No. OR-23-7151 (fullbody)



loaded with different types of stolen Scarp and railway iron materials weighing about approximately 15 tons and one duplicate DL No. 1574/2k of Bharatlal Sankar was seized on 29.06.2007 in presence of witnesses namely Sambhunath Sahoo and Somnath Kumar Biswal by the LO Sri Rabi Chandra Jena ASI, Dharuadihi O.P. On perusal of the case record it is seen that on did. 01.10.2007, Sri R K Jha S.E of Railway has visited the Dharuadihi O.P and verified the loaded truck bearing Regd. No. OR-23-7151 and detected two pcs. Of Railway materials nomenclatured as Bearing plates and one C.S.T.G plate which are used in railway track. After the completion of the investigation the charge sheet against the accused persons was submitted by Sri Sujit Kumar Sahoo, OIC, Bhasma P.S, vide C.S No. 62 dtd. 5.10.2007, U/s /s.379/411/34 of IPC r.w 3RP (UP) Act. It is mentioned in the said charge sheet in the column no. 12 under heading Details of properties/ Articles/ Documents recovered/seized during investigation and relied upon that the seized truck bearing Regd. No. OR-23-7151 loaded with different types of scrap materials was seized on 29.06.2007 by the 1.0 Rabi Chandra Jena was kept at O.P. However the seized truck bearing Regd. No. OR-23-7151 loaded with different types of scrap materials was never produced in the Court at any time



during the trial. In due obedience to the memo no.398, dtd 02.03.2026 of your Honour's Court a report was called for from the IIC, Bhasma P.S vide this office letter no.389, dtd.06.03.2026 to submit a report regarding the present status of property involved in this case. The IIC, Bhasma PS has reported to this court vide DR No. 629, dtd. 08.03.2026 that after careful verification of Malkhana Register, Malkhana stocks and other available records of Bhasma PS he found no entry relating to deposit or custody of the property in this case. He further submitted that upon the physical verification of the malkhana as well as the premises of Bhasma P.S, no vehicle bearing Regd. No. OR-23-7151 loaded with different types of stolen scarp and railway iron materials weighing about 15 tons was found available either in malkhana or within premises of Bhasma P.S. The ICBhasma P.S further submitted that the ease property is neither available in the malkhana of Bhasma P.S or is present in the custody of Bhasma P.S at present.

xxx xxx xxx"

2. In the light of the same, learned counsel for the State is called upon to obtain specific instruction regarding the state of the materials in the backdrop of the order passed by the learned Addl. District and Sessions Judge, Sundargarh.



For convenience, the order dated 08.10.2021 in Criminal Appeal No.3/9 of 2016 passed by the learned Addl. District and Sessions Judge, Sundargarh is culled out hereunder:

"xxx xxx xxx

6. Perused the evidence of the witnesses and the statement of the accused persons including the appellant recorded U/s 313 of Cr.P.C. On perusal of the judgment, it is found that the learned lower Court by considering the fact that the prosecution has failed to prove the fact of seizure of truck as well as commission of theft by the driver, acquitted the present appellant along with two other accused persons from the charges labeled against them. So far as with regard to the disposal of the property is concerned, U/s 452 of the Cr.P.C. empowers the criminal Court for disposal of the property by three modes i.e.

- (i) destruction;
- (ii) confiscation or
- (iii) delivery to any person claiming to be entitled to possession thereof.

In the provision U/s 452 of Cr.P.C, it is clear that the person who claims to be entitled to the possession of the property Seized in any criminal offence, must satisfied the Court either by oral or documentary evidence that he is entitled for such possession. In the case in hand, the appellant completely denied that the seized articles. were transported for him as he had purchased from the



co-accused Md. Sarfaraj. Neither the oral nor the documentary evidence has been adduced before the learned lower Court regarding entitlement of the appellant to possess the articles. As property is having value, the confiscation of the said property and the sale proceeds thereof will be an add with the State Exchequer. So, in absence of the evidence regarding entitlement of the possession by the appellant before the learned lower Court, I am completely agreed with the order of the learned lower Court regarding confiscation of the seized articles to the State. Hence, I do not find any infirmity in the order of the learned lower Court which needs interference by this Court in the appeal.

xxx xxx xxx"

(Emphasized)

3. Learned counsel for the State is called upon to file an affidavit of the concerned IIC regarding the state of material.
4. List this matter on 13.04.2026.
5. Copy of this order be made over to the learned counsel for the State.

(V. NARASINGH)
Judge

Signature Not Verified

Digitally Signed
Signed by: SOUMYA RANJAN SAMAL
Designation: Jr. Stenographer
Reason: Authentication
Location: High Court of Orissa
Date: 19-Mar-2026 11:00:31

