

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21167 of 2015

Arising Out of PS.Case No. -492 Year- 2014 Thana -PURNEA SADAR District- PURNIA

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Nakul Deo Singh son of Late Biro @ Biru Prasad Singh, Resident of Mohalla-
Rajendra Colony, P.O.- Mania More, P.S.- Naugachia, District- Bhagalpur

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate

For the Opposite Party/s : Mr. Ram Sumiran Rai, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-06-2015

By an application filed under section 482 of the Code of Criminal Procedure (For short “the Code”), the petitioner has challenged the order dated 13.4.2015 passed by the learned Sessions Judge, Purnea in Cr. Revision No.49 of 2015. The criminal revision was filed against the order dated 25.3.2015 passed by the learned Chief Judicial Magistrate, Purnea in Sadar P.S. Case No.492 of 2014 dismissing the petition filed by the petitioner under sections 451 and 457 of the Code. The application was filed for release of the lorry bearing Registration No.JH-04E-1605 having Engine No. B591803111A62981208, Chasis No. MAT466383B2A01540 which was seized in connection with Sadar P.S. Case No.492 of 2014 instituted on a written complaint made by one Bajranglal Ladha alleging, inter alia, that being an authorized representative of M/S Abha Agro Exports Pvt. Ltd., he had hired the lorry in question from



its owners Aditya Bhagat and Bharat Bhagat through lorry supplier Sanjay Sharma and loaded 553 bags containing 34.9 metric ton maize from Kali-warehouse, Harda Road, Gulabbagh to be delivered at Mehedipur (Malda). The lorry driver Md. Ansar started with lorry and goods for Mehedipur but the lorry did not reach the destination and when efforts were made to contact the driver his cell phone was found switched off. Thereafter, the lorry owner Aditya Bhagat was contacted but he did not make any positive response. Subsequently, the lorry was located in Purnea in a workshop. The informant has alleged that the lorry owner and the driver have stolen the goods.

2. On the basis of the aforesaid written report Purnea Sadar P.S. Case No.492 of 2014 was registered under sections 406 and 420 of the Indian Penal Code against Aditya Bhagat, Bharat Bhagat and Md. Ansar on 1.10.2014 and investigation was taken up.

3. It has been contended that during investigation the vehicle was seized. The matter is still under investigation and the petitioner has not been made accused in the case. As a matter of fact, he is the registered owner of the lorry in question. The certificate of registration, certificate of fitness and the certificate of insurance would make it evident that undisputedly the petitioner is a bona fide owner of the seized lorry. On the strength of the aforesaid certificates, he made an application under sections 451 and 457 of the Code before the learned Chief Judicial Magistrate, Purnea for release of the



vehicle, who called for a report from the Investigating Officer of the case. The Investigating Officer has submitted his report in which he has raised no objection to the prayer of the petitioner for release of the vehicle in his favour. Despite there being no rival claimant and there being no objection to the prayer for release by the investigating agency, the learned Chief Judicial Magistrate, Purnea rejected the application of the petitioner vide order dated 25.3.2015 on the ground that the Power of Attorney holder Aditya Bhagat, who was authorized to ply the vehicle on hire basis is still absconding in the case.

4. It has been contended that being aggrieved by the aforesaid order dated 25.3.2015 the petitioner preferred a revision application before the learned Sessions Judge, Purnea, but the learned Sessions Judge, Purnea rejected the revision application on erroneous grounds.

5. Learned counsel for the petitioner has submitted that the impugned order passed by the learned Sessions Judge, Purnea is contrary to the direction given by the Supreme Court in *Sunderbhai Ambala Desai vs. State of Gujarat* reported in (2002)10 SCC 283.

6. Learned Additional Public Prosecutor appearing on behalf of the State has fairly conceded that since there is no dispute to the fact that the petitioner is registered owner of the vehicle, the court below ought to have released the same in his favour.

7. Sections 451 and 457 of the Code, which deals with

custody and disposal of property pending trial and procedure by police upon seizure of property respectively read as under :

“451. Order for custody and disposal of property pending trial in certain cases.-

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.

Explanation.- For the purposes of this section, “property” includes-

- (a) property of any kind or document which is produced before the Court or which is in its custody.
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting

the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

8. A bare reading of Sections 451 and 457 of the Code would make it evident that whenever the seizure of a property is reported to a Magistrate under the provisions of the Code by any police officer, the Magistrate is required to pass appropriate order with regard to such property, such as (i) for proper custody pending conclusion of the inquiry or trial; (ii) to order it to be sold otherwise disposed of, after recording such evidence as it thinks necessary; and (iii) if the property is subject to speedy and natural decay, to dispose of the same.

9. In **Sunderbhai Ambala Desai** case (supra), the Supreme

Court observed in paragraphs 17 and 18 as under :

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

10. Undisputedly, in the registration certificate the name of the petitioner has been indicated as owner of the vehicle in question.

The other documents, such as, certificate of fitness and insurance papers etc. also indicate that the vehicle stands registered in the name of the petitioner. In his report, the investigating officer has raised no objection to the release of vehicle in favour of the petitioner.

11. In view of the factual position highlighted above, the present application is allowed. The impugned order dated 13.4.2015 passed by the learned Sessions Judge, Purnea in Cr. Revision No.49 of 2015 and the order dated 25.3.2015 passed by the learned Chief Judicial Magistrate, Purnea in Sadar P.S. Case No.492 of 2014 are set aside.

12. The vehicle in question is directed to be released in favour of the petitioner on the following conditions:

- “(a) The petitioner shall furnish a bond of rupees one lac with two sureties of the like amount each; and
(b) He shall furnish an undertaking on oath not to alienate, encumber or alter the vehicle and to produce the same as and when required by the Trial Magistrate”.

(Ashwani Kumar Singh, J)

Md.S./-

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