

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15475 of 2015

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1. Dani Singh son of Srikant Singh, resident of village- Kachra Mohalla, Police Station- Mokama and District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Superintendent of Police, Rural, Patna.
5. The Deputy Superintendent of Police, Barh, Patna.
6. The Officer-in-Charge, Bakhtiyarpur Police Station, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2

For the Respondent/s : Mr. SC21- KUMAR MANISH

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 23-11-2015

Heard Mr. Manish Kumar no. 2 for the petitioner and Mr. Kumar Pankaj, A.C. to S.C.-21 for the State.

The truck of the petitioner bearing registration no. BR-01GB-9801 was seized by the Police in connection with Bakhtiyarpur P.S. Case No. 226 of 2013 registered under Sections 20 and 22 of the N.D.P.S. Act as huge amount of ganja was found laden thereon. A confiscation proceeding was initiated by the respondent District Magistrate in relation to the vehicle/truck. The petitioner filed his show cause in the said proceeding. While the said matter was pending consideration he filed a quashing application in this Court vide Cr. Misc. No. 255 of 2015. A Bench of this Court vide order dated 26.2.2015 disposed of the application permitting the petitioner to



approach the respondent District Magistrate for expeditious disposal of the proceeding. The respondent District Magistrate by the impugned order dated 27.6.2015 (Annexure-3) passed in Misc. Excise Case No. 03/2014-15 ordered for confiscation of the truck under the provisions of the Bihar Excise Act. Aggrieved thereby, the writ petition has been filed.

It has been submitted by the petitioner that there is no provision in the N.D.P.S. Act under which the District Magistrate is empowered to initiate such confiscation proceeding. The order is, therefore, *per se* bad in law. He has relied in this regard on Section 63 of the Act which reads as under:-

“63. Procedure in making confiscations.- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under Section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly;

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, [controlled substance,] the opium poppy, coca plant or

cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

The State counsel conversely submitted that the proceeding before the District Magistrate was challenged by the petitioner in the quashing application wherein this Court refused to interfere therewith and directed for expeditious disposal thereof. In the show cause, which the petitioner filed, no such stand was taken that the District Magistrate has no jurisdiction in the matter. Ganja is an item which is covered by the Excise Act also and, as such, the District Magistrate shall have jurisdiction in the matter in view of the provisions contained in Section 67 of the Excise Act. If the petitioner is aggrieved thereby, he may file an appeal as provided under the Excise Act.

Indisputably, the truck was seized in connection with a case registered under penal provisions of the N.D.P.S. Act. The provisions under the Act confer such power of confiscation on the Trial Court. No such power is separately given to the District Magistrate. The contention of the State that the petitioner should file appeal if aggrieved by the said order does not impress the Court since the order has been passed by an authority who has not been conferred any such jurisdiction under the Act. However, considering the fact that an order

has been passed, this Court, instead of interfering with the same, would observe and direct that any order passed in the pending criminal case by the Trial Court in terms of Section 63 of the Act shall govern the field. In other words, if an order is passed in favour of the petitioner, the truck shall be released either provisionally or otherwise in favour of the petitioner irrespective of the order which the District Magistrate passed on 27.06.2015.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

Pankaj/-

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