

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8884 of 2015

Arising Out of PS.Case No. -354 Year- 2014 Thana -BAKHRI District- BEGUSARAI

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1. Manish Shankar Singh son of Sri Brahamdeo Singh
 2. Ravi Shankar Singh son of Sri Brahamdeo Singh
 3. Rash Bihari Singh son of Late Radh Singh

All residents of Village - Garhatta Kala, Police Station - Brahampur in the district of Buxar, presently residing at 25/1, Abhay Guha Road, Liluah, Hawrah, Police Station - Bali in the district of Howrah (West Bengal) - 711204.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr.Adv.
Mr. Bimal Kumar, Adv.
Mr. Prabhu Narayan Sharma, Adv.
Mrs. Anita Kumari Singh, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-08-2015

The instant application under section 482 of the Code of Criminal Procedure is directed against the order dated 06.01.2015 passed by the learned Sub Divisional Judicial Magistrate, Begusarai in Bakhari P.S.Case No. 354 of 2014, by which the prayer to release the trucks bearing Registration No. WB-23A/8755 and WB-23B/1955 has been rejected. The petitioners have also prayed for a direction to be issued to the court below to release the aforesaid trucks in favour of the petitioners.

2. The aforesaid two trucks were seized in connection with Bakhari P.S.Case No. 354 of 2014 registered on 08.11.2014 under



section 7 of the Essential Commodities Act and section 3/5 of the Prevention of Black-marketing and Maintenance of Essential Commodities Act, 1980. It is stated in the FIR that on 08.11.2014 two trucks bearing Registration No. WB-23A/8755 and WB-23B/1955 loaded with rice were intercepted by the Block Supply Officer, Bakhari, Begusarai. According to the informant, 327 packets of rice weighing 163.05 quintals were loaded on the truck bearing Registration No. WB-23A/8755 and 319 packets of rice weighing 159.05 quintals were loaded on the truck bearing Registration No. WB-23B/1955. The main thrust of the allegation of the informant is that the rice in question was being transported for black-marketing without any document. One Angad Singh was the driver of the truck bearing Registration No. WB-23B/1955 whereas one Krishna Singh was the driver of the truck bearing Registration No. WB-23A/8755.

3. It is contended that no offence can be said to have been committed in respect of transportation of rice as there is no restriction on transportation of rice/food-grains and also there is no material to establish that the rice was being carried for black-marketing. It is further contended that the marking of FCI, Govt. of Punjab on the bags containing rice would not indicate that the articles contained in the bags belong to FCI, Govt. of Punjab as such bags are sold in the open market.



4. It is contended that the petitioner nos. 2 and 3 are owners of the trucks in question and petitioner no.1 is the power of attorney holder of the two petitioners. He also happens to be the son of petitioner no.1. The owners of the trucks have not been made accused in the criminal case. Petitioner no.1 Manish Shankar Singh, the power of attorney holder of the aforesaid two trucks filed an application before the learned Sub Divisional Judicial Magistrate, Begusarai on 15th December, 2014 for release of the trucks in question. The learned Sub Divisional Judicial Magistrate, Begusarai called for a report from the Police Station in the light of the petition. The police submitted their report in which it has been contended that the two vehicles are lying in the Police Station and the rice in question was handed over to one Basudeo Das, Assistant Godown Manager, S.F.C., Bakhri. It has further been stated that the food grains have been confiscated and the Sub Divisional Magistrate, Bakhri had been directed by the authorized officer to sell the rice and deposit the sale proceeds in treasury of Begusarai.

5. However, after receipt of the police report, the learned Sub Divisional Judicial Magistrate, Begusarai disposed of the application for release of the two trucks in question on the ground that confiscation proceedings in respect of the two trucks in question are pending before the District Magistrate, Begusarai.



6. After hearing respective counsel for the parties, a report was called for from the District Magistrate, Begusarai by this Court vide order dated 21.05.2015 as to whether any confiscation proceeding with regard to the trucks seized in connection with Bakhari P.S. Case No.354 of 2014 has been initiated. The District Magistrate, Begusarai has submitted his report dated 09.07.2015 wherein it has categorically been stated that the two trucks in question have not been confiscated.

7. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor submits that he has instructions from the authorities of the respondent State of Bihar that in respect of the two trucks in question no confiscation proceeding has been initiated till date.

8. Regard being had to the facts and circumstances of the case, the order dated 06.01.2015 passed by the learned Sub Divisional Judicial Magistrate, Begusarai in Bakhari P.S. Case No. 354 of 2014 cannot be sustained. The order is apparently based on wrong presumption of facts and law.

9. In *Sunderbhai Ambalal Desai Vs. State of Gujarat* [2003 (4) PLJR (SC) 244], after discussing the relevant provisions dealing with release of property under sections 451 and 457 of the Code of Criminal Procedure, the Supreme Court held in paragraphs 7, 17 and 18 as under :-

“7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

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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 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 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 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. Keeping in mind the factual position of the case and the decision of the Supreme Court in Sunderbhai Ambalal Desai (Supra) the impugned order dated 06.01.2015 passed by the learned Sub Divisional Judicial Magistrate, Begusarai in Bakhari P.S.Case No. 354 of 2014 is set aside. The learned Sub Divisional Judicial Magistrate, Begusarai is directed to release the vehicles bearing Registration Nos. WB-23A/8755 and WB-23B/1955 in favour of the registered owners only after being satisfied with the claim of ownership on the basis of examination and verification of relevant documents relating to the vehicles on the following conditions :-

- (a) The registered owners shall furnish a bond of Rs.1,00,000 (Rupees one lakh) with two sureties of the like amount each;
- (b) They shall furnish an undertaking on oath not to alienate, encumber or alter the vehicles and shall produce the same as and when required by the trial Magistrate.

(Ashwani Kumar Singh, J)

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