

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39113 of 2012

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Md. Rizwan @ Rizwan Ahmad, Son of Sri Abdul Wari, resident of Village-
Panchayati Akhada, Police Station- Gaya Kotwali in the town and district of
Gaya.

.... Petitioner

Versus

1. The State of Bihar.
 2. The officer Incharge, Chandauti Police Station in the district of Gaya.
- Opposite Parties.

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Appearance :

For the Petitioner : Mr. Prabhu Narayan Sharma, Advocate.
For the State : Mr. Suraj Pd.Singh (App)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

5 07-05-2015

Heard.

After having failed to get the release of the seized
aluminum wire in connection with Chandauti P.S.Case Nos.157
and 165 both of the year 2010. The petitioner has approached this
Court through this petition.

The cases were registered under Section 379 Indian
Penal Code under the allegation that the seized articles were the
theft properties belonging to the Electric Supply Division,
Chandauti in the district of Gaya. The allegation was contained in
a written report and the seizure was affected allegedly from the
godown which was created in the rented house of Sudama Yadav.
The wires were kept in 40 gunny bags and were weighing about
30 quintals as appears from seizure list prepared in connection
with the two cases, i.e., Chandauti P.S.Case Nos.157 and 165 both

of the year 2010. The petitioner's case was that the petitioner was running aluminum scrap and established the shad godown in the house of Sudama Yadav at village-Kandi Nawada and had stored the seized properties which were unlawful seized by the police and after cases were registered under Section 379 Indian Penal Code.

On receiving the petition seeking the release of the seized properties, the learned Chief Judicial Magistrate, Gaya, appears seeking a report from the police on the viability of releasing the seized properties.

The petitioner claimed the release of the seized aside on the ground that the seized properties had been purchased from M/S Ram Charitra Saw, 246A, Acharya Prafulla Chandra Road, Kolkatta-700 006. In support of his claim, the petitioner had produced the copies of the tax invoices and other related documents before the court below.

However, while submitting the report, the police had pointed out to the learned Chief Judicial Magistrate, Gaya, that A.S.I. Brahmdeo Paswan of Chandauti police station, had gone to Kolkata for verifying the claim of the petitioner as also for verifying as to whether the firm the petitioner had claimed to have purchased the properties from was indeed existing. The police reported that A.S.I. Bhramdeo Paswan reported that he did not

find the firm at the given address and the documents filed by the petitioner seeking the release of the properties were forged and fabricated.

The learned Chief Judicial Magistrate, Gaya considering the report of the police rejected prayer of the petitioner to release the properties seized by the police in connection with the above noted cases in his favour.

It was contended by the learned counsel for the petitioner that a specific statement has been made in paragraph-15 of the petition that the firm was duly existing at the given address and that the same may be verified by any higher police officer may be the Superintendent of Police, Gaya which prayer was also made before the Chief Judicial Magistrate, Gaya as also before the Superintendent of Police, Gaya.

As appears from the very facts stated above, the seized properties were aluminum wire which could never be said to be perishable properties. The police had verified the claim of the petitioner as regards the existence of the firm from which the petitioner had claimed to have purchased the aluminum wire and had reported the same not existing. It was reported by the police that the documents which were filed by the petitioner before the Chief Judicial Magistrate, Gaya, were all forged and fabricated. In

such a situation, the contention of the learned counsel or the statement made in paragraph no. 15 of the petition is very difficult to be accepted.

I have already noted that the seized property is not a perishable property. There is ample provision in the Cr.P.C. taking care of disposal of the seized property during and after trial of the case, so much so that in case of any confusion or uncertainty enquiry could also be held by the C.J.M., Gaya, or at his orders by any of the Magistrate. As facts stand presently, it does not appear desirable that this Court should interfere with the order passed by the Chief Judicial Magistrate, Gaya, and it appears proper that the matter be allowed to be raised at a proper stage after conclusion of the trial.

The petition is dismissed with the above observation.

B.Kr./-U.K.

(Dharnidhar Jha, J)

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