

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 2024 of 2015
IN
Civil Writ Jurisdiction Case No. 15678 of 2013

Jai Prakash Singh, son of Manlal Singh, resident of mohalla M. G. Nagar, Bahadurpur, Kankarbagh, Police Station Patrakarnagar, District Patna, present residing at Mohalla Bind Toli, Ward No. 6, Arrah Chouk, Police Station Arrah (Town), District Bhojpur at Ara

.... Appellant

Versus

1. The State of Bihar
 2. The Principal Secretary, Forest Department, Government of Bihar, Patna
 3. The Superintendent of Police, Rohtas at Sasaram
 4. The Divisional Forest Officer, Rohtas at Sasaram
- Respondents

Appearance :

For Appellant : Mr. Vipin Kumar Singh, Advocate
For the respondents : Mr. Anjani Kumar, AAG VI

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE JUSTICE ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 06-11-2015

For allegedly carrying stone chips in the truck bearing registration No. BR-01GE/9946 without authority of law, the truck and the stone chips were seized and a confiscation proceeding was initiated in respect of the seized truck and the stone chips. The confiscation proceeding gave rise to Confiscation Case No. 164 of 2015.

2. By making an application to respondent No. 4, Divisional Forest Officer, Rohtas, at Sasaram, the petitioner-



appellant, as owner of the said truck, sought for interim custody of the said truck; but no order was passed therein. The petitioner-appellant, then, came to this Court with a writ application, made under Article 226 of the Constitution of India, seeking necessary direction to be issued to the forest officials to release the petitioner's truck. The writ petition gave rise to CWJC No. 15678 of 2015.

3. By the order under appeal, dated 05.10.2015, a learned single Judge of this Court has dismissed the writ petition by pointing out that as the *confiscation proceeding* has already been initiated, there is no reason to pass any order for provision release of the vehicle, in question.

4. We have heard Mr. Vipin Kumar Singh, learned Counsel, appearing on behalf of the appellant, and Mr. Anjani Singh, learned Additional Advocate General No. VI, appearing on behalf of the respondents.

5. While considering the present appeal, it needs to be noted that until the time the order on *confiscation proceeding* is made, it is the duty of the State forest officials to maintain the vehicle in the same condition in which it was seized so that the vehicle, in question, can be returned to the person entitled thereto in the same condition in which the vehicle was seized if the *confiscation proceeding* fails. Logically extended, it will mean that there is no legal impediment in

provisionally releasing a vehicle involved in the commission of an offence, pending adjudication in a *confiscation proceeding*, provided that the authorized officer or the Court, as the case may be, is reasonably assured that the vehicle shall be produced by the custodian as and when ordered or required.

6. Situated thus, what crystallizes from the above discussion is that there is no bar for the vehicle to be released in interim custody of the petitioner-appellant if *confiscation proceeding* is pending. The power, however, to release the vehicle, in question, provisionally can be exercised only by the Forest Officer, as contemplated by Section 62 C of the Indian Forest Act, 1927.

7. In the case at hand, since there is nothing on record to show that the vehicle, in question, will not be produced by the petitioner during the *confiscation proceeding* or as and when, otherwise, required, this Court is of the view that it would have been appropriate to direct *provisionally* release of the truck in favour of the petitioner-appellant pending finalization of the *confiscation proceeding*.

8. In the result and for the foregoing reasons, this appeal succeeds. The order under appeal, dated 05.10.2015, passed in CWJC No. 15678 of 2015, is hereby set aside and we, in the interest of justice, direct respondent No. 4, namely, Divisional Forest Officer, Rohtas, at Sasaram, to release

provisionally the vehicle, in question, in favour of the appellant, subject to the following conditions.

(i) The appellant shall furnish all the necessary papers/documents of ownership and security as may be deemed fit and proper by respondent No. 4.

(ii) The appellant shall undertake, in writing, that the vehicle, in question, shall neither be alienated nor be transferred in favour of any third party during the pendency of the *confiscation proceeding* and that the vehicle, in question, shall be produced as and when called upon or required in the *confiscation proceeding* or otherwise.

9. With the observations and directions, this appeal stands disposed of.

(I. A. Ansari, ACJ.)

(Anjana Mishra, J.)

A.I./- A.F.R.

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