

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32668 of 2012

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Kailash Prasad S/O Late Buteri Sah R/O Shermari Bazar, P.S. Pirpainti,
District - Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Arbind Kumar Sharma, O.I.C., Pirpainti Police Station, Pirpainti District
Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh

For the Opposite Party/s : Mr. Abhay Kumar 1(App)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

4 20-02-2015 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner seeks quashing of an order dated
23.5.2012 of G.R.No.910/08 passed by Sri S.B.Kumar, J.M.,
Bhagalpur, whereby and whereunder the learned Magistrate has
rejected two applications filed by the petitioner dated 20.1.2009
for his discharge from Pirpainti Case No.80/08 dated 7.4.2008 and
subsequently petition on the same date praying for release of the
seized copper wire. It is submitted on behalf of the petitioner that
the learned Magistrate without going into the merit of the case and
without considering the evidence brought on record by the
petitioner in respect of the fact that the petitioner was running his
permanent registered shop in the name of Super Electricals for

conducting repair works of electric motor, diesel engine, generator, dynamo, inverter, charger, stabilizer, fans and other domestic electric equipments.

3. The petitioner prayed that the order of cognizance as well as the order of discharge petition be passed and further direction be given for the release of the seized copper wire.

4. Learned counsel for the petitioner submits that earlier the Officer-in-Charge of Pirpaiti Police Station vide written report dated 7.4.2008 addressed to the Chief Judicial Magistrate, Bhagalpur, has alleged that on receipt of confidential information during course of raid on the shop of the petitioner Kailash Prasad in Semari Bazar House, it was found that he had kept wire made of copper which he alleged was stolen. It was stated by the said Officer-in-Charge that during course of investigation around 175 Kg. of wire of copper were stored in two gunny bags for which the petitioner was unable to produce any paper and in absence of any paper the informant suspected that it was a theft item copper wire and the seizure list was prepared.

5. The informant got registered Pirpaiti P.S. Case No.80 of 2008 against the petitioner under Section 414 of the I.P.C.

6. Learned counsel for the petitioner submits



that he is a registered licence holder from the State Industries Department and used to get repairing works of electrical equipments from the State Government Offices as well as Railway. In support of his contention the petitioner has filed Annexure-4 which is a letter from the Senior Section Electrical Engineer inviting the petitioner to give quotation for repairing of defective stabilizer and battery chargers. It is further submitted that the petitioner was also holding licence from the Industries Department, Bhagalpur which is Annexure-3 and was functioning his shop, namely, M/s Super Electricals. A perusal of the said licence clearly indicates that the petitioner was a licence holder for repairing electrical equipments details in the said licence issued in his favour. The copper wire so recovered, were in reality the waste copper removed from defective electrical equipment, such as, fans, motors and transformers.

7. Learned counsel for the petitioner submits that despite the fact that there was no claimant of the copper wire which is said to have been recovered from the house of the petitioner nor had there been any case registered for the theft of the same, the informant, only on suspicion, has roped the petitioner in the present case even though not a single witness has come forward to say that the recovered copper wire was stolen

wire. He further submits that the I.O. vide Charge sheet No.83/08 submitted charge sheet under Section 414 of I.P.C. and subsequently the petitioner being aggrieved by the said charge sheet filed two petitions one for discharge from the case and secondly for release of the defective wire.

8. The contention of the petitioner is simple. Firstly that there was no report of theft of copper wire from any corner. Secondly, the copper wire so recovered from his shop was, in fact, copper wire which has been extracted from the defective electrical equipments after repairing. It was submitted that no useful purpose has been served by keeping copper wire by persons which equipments had been repaired so they used to leave the same in his shop. It was under such premise that the petitioner prayed for release of the old copper wire recovered from his premises and also for discharge from the prosecution of the said case.

9. The learned counsel for the petitioner further submits that a report was called for from the investigating agency but the police did not express any objection regarding release of the said copper wire. The said fact is evident from perusal of the impugned order. However, the Magistrate without appreciating the case of the petitioner and assuming his guilt that such amount of



copper wire could not have been available with the petitioner, unauthorisedly proceeded to pass the impugned order. Learned counsel for the petitioner submits that the court has clearly presumed the guilt of the petitioner as in the said order it has been pleased to observe that the seized wire was stolen ones and had been kept with the petitioner which he used to market through his shop in selling utensil.

10. Learned counsel for the State has drawn my attention to certain paragraphs of the case diary which have been referred to for the purpose of indicting the petitioner. However, after perusal of the contents of the said paragraph it does not appear that the petitioner was in fact a seller of utensil rather there is material on record to show that the petitioner was in fact a licence holder of repairing work of electrical equipments and had been participating in conducting repair work even on behalf of the State Government and Railways including the Electricity Department.

11. It is settled law that if the materials placed before the Magistrate do not reveal the complicity of the person concerned, he can proceed to discharge the accused. It appears that the Magistrate after calling for, did have a report before him dated 24.9.2011 filed by the Pirpainty P.S. wherein it was stated that

they had no objection to release of the seized wire in favour of the accused/petitioner. Considering the overwhelming materials on record placed before the learned court by the petitioner duly supported by the prosecution and also after perusing the case diary it appears that the learned Magistrate has presumed the guilt of the petitioner and ignoring materials placed before it has rejected the discharge petition. Consequently the order dated 23.5.2012 is set aside.

12. Learned counsel for the petitioner prays that since both the petitions have been clubbed and disposed of together, it is in the interest of justice that the copper wire must be released. Under such circumstance, this Court directs that the copper wire seized from the petitioner be released in his favour specially in view of the fact that the Court has noted that there is no objection on behalf of the prosecution for release of the same, the application is thus allowed.

(Anjana Mishra, J)

AnilKrSinha/-

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