

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1843 of 2016

IN

Civil Writ Jurisdiction Case No. 12315 of 2016

1. Anup Kumar Gupta, Son of Kanhai Prasad, resident of village- Puri Mohan Bigha, Police Station- Dehri, District- Rohtas at Sasaram.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Forest Department, Government of Bihar, Patna.
3. The Divisional Forest Officer, Rohtas at Sasaram.
4. The Forest Range Officer, Tilauthu, Rohtas at Sasaram.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Bindhyachal Singh, Advocate
Mr. Vipin Kumar Singh, Advocate
For the Respondent/s : Mr. Raghwanand, GA-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 28-09-2016

This appeal, under Clause 10 of the Letters Patent of Patna High Court Rules, has been preferred by the petitioner-appellant against the order, dated 20.08.2016, passed by a learned single Judge of this Court in CWJC No.12315 of 2016.

2. While the writ petitioner's truck, bearing Registration No.UP-65AR-7471, was carrying stone chips, it was stopped by the Forest personnels and the truck, along with the stone chips, was seized alleging that the said stone chips were *forest produce*, though, according to the petitioner, the said stone chips were being carried with requisite transport challans/transit permits. Forest Case No. 61 of 2016 was accordingly registered and a confiscation proceeding,

bearing Confiscation Case No. 139 of 2016 (A), was initiated.

3. The writ petitioner, by his application, dated 04.07.2016, moved the Divisional Forest Officer-cum-Authorised Officer, Rohtas, at Sasaram, seeking *provisional* release of his truck pending confiscation proceeding. As the writ petitioner's application, dated 04.07.2016, aforementioned, seeking *provisional* release of his truck, was not disposed of, the writ petitioner moved this Court, under Article 226 of the Constitution of India, giving rise to CWJC No.12315 of 2016.

4. By order, dated 20.08.2016, passed, in CWJC No.12315 of 2016, a learned single Judge of this Court directed that the appellant's application, seeking *provisional* release of the said truck shall be decided, in accordance with law, by the authority concerned after hearing the parties expeditiously, preferably, within a period of three months from the date of receipt/production of a copy of the order, dated 20.08.2016, aforementioned. Aggrieved by the order, 20.08.2016, and also by the fact that the vehicle, in question, has not been *provisionally* released, this appeal has been preferred.

5. We have heard Mr. Bindhyachal Singh, learned Counsel, appearing on behalf of the appellant, and Mr. Raghwanand, learned Government Advocate No.11, appearing on behalf of the State-respondents.

6. 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 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 of 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.

7. 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.

8. 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-appellant during the confiscation proceeding or as and when, otherwise, required, this Court is of the view that it would have been appropriate to direct *provisional* release of the truck in favour of the petitioner-appellant pending finalization of the confiscation proceeding.

9. In the result and for the foregoing reasons, this appeal succeeds. The order under appeal, dated 20.08.2016, passed in CWJC

No. 12315 of 2016, is hereby set aside and we, in the interest of justice, direct respondent No. 3, 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. 3.

(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.

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

(I. A. Ansari, CJ)

(Dr. Ravi Ranjan, J)

Mkr./-

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