

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29121 of 2013

Arising Out of PS.Case No. -31 Year- 2009 Thana -GOVERNMENT OFFICIAL COMP. District-
AURANGABAD

=====

Bijay Kumar Singh S/O Sheo Pujan Singh R/O Village- Dariyapur, P.S.-
Aurangabad, District- Aurangabad

The State Of Bihar

Versus

.... Petitioner

.... Opposite Party

=====

Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate

For the Opposite Party/s : Dr. Rabindra Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-08-2016

By way of preferring the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”), the petitioner has challenged the order dated 09.04.2013 passed by the learned Sessions Judge, Aurangabad in Cr. Revision No. 39 of 2013 whereby while affirming the order dated 11.02.2013 passed by the learned Judicial Magistrate, 1st Class, Aurangabad in Excise Case No. 31 of 2009, he has rejected the revision application.

2. It appears that vide order dated 11.02.2013, the learned Magistrate has rejected the application preferred by the petitioner under Section 451 of the CrPC for release of pick-up van



bearing Registration No. JHIOG/5428 only on the ground that certain quantity of illicit liquor was recovered from the vehicle registered in the name of the petitioner. Learned Magistrate has contended in his order that the police have submitted a supplementary report under Section 173(2) of the CrPC wherein the petitioner has also been sent up for trial. According to him, the vehicle in question may be required as material exhibit during trial. Hence, looking at the gravity of the offence, its release was not proper.

3. By the impugned order dated 09.04.2013, the revisional court has dismissed the revision application against the order passed by the learned Magistrate on the ground of seriousness of the offence as also the fact that on completion of trial the vehicle may be liable for confiscation.

4. It is submitted by the learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question. He had no knowledge about the activity of the driver who was found carrying illicit liquor on the date of occurrence. It is urged that the vehicle in question has been parked in the police station since long and if it is not released it would turn into junk. He has also submitted that till date no confiscation proceeding has been initiated in respect of the vehicle in question and there is no

likelihood of the trial coming to an end in near future.

5. *Per contra*, learned counsel for the State has submitted that the trial of the case is going on and the vehicle in question is a material exhibit. He has defended the order passed by the learned Magistrate and the revisional order by submitting that the offence alleged under Section 47(a) of the Excise Act is serious one and the petitioner's involvement in committing the crime was found by the police during investigation.

6. I have heard respective counsel for the parties and perused the record.

7. The issue involved in the present case has been considered by this Court in detail in the matter of **Shyam Lohia & Anr. vs. State of Bihar** since reported in **2016 (1) PLJR 556**. The impugned order whereby the revisional court has confirmed the order passed by the Judicial Magistrate and the order passed by the Judicial Magistrate are in clear violation of the ratio laid down by Supreme Court in **Smt. Basava Kom Dyamogouda Patil vs. State of Mysore and another [(1977) 4 SCC 358]**, **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283]**, **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 290]** and **General Insurance Council and Ors vs. State of Andhra Pradesh & Ors. [(2010) 6 SCC 768]**.



8. In my considered opinion, while passing the order dated 11.02.2013 and impugned order dated 09.04.2013, the learned Judicial Magistrate, Aurangabad and the learned Sessions Judge, Aurangabad respectively were bound to follow the statutory provisions contained in Chapter XXXIV of the CrPC and the principles laid down by the Supreme Court in the matter of **Smt. Basava Kom Dyamogouda Patil** (supra), **Sunderbhai Ambalal Desai** (supra) and **General Insurance Council** (supra). The non-compliance with the directions of the Supreme Court is not permissible in law. If the sub-ordinate courts fail to follow the directions of the Supreme Court, it shall create confusion in administration of justice and undermine the majesty of law.

9. Keeping in mind the discussion made, hereinabove, the impugned order dated 09.04.2013 passed by the learned Sessions Judge, Aurangabad in Cr. Revision No. 39 of 2013 and the order dated 11.02.2013 passed by the learned Judicial Magistrate, 1st Class, Aurangabad in Excise Case No. 31 of 2009 cannot be sustained. Accordingly, they are set aside.

10. The petitioner is directed to file a fresh application before the court of Magistrate in respect of the release of the vehicle in question. In case such an application is filed before the court of Magistrate, it shall be bound to pass order in

accordance with law after taking into consideration the decisions of the Supreme Court noticed hereinabove expeditiously, preferably within four weeks from the date of filing of the said application.

11. With these observations and directions, the application is allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

U		T	
---	--	---	--