

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49552 of 2015

Arising Out of PS.Case No. -22 Year- 2015 Thana -BOCHHA District- MUZAFFARPUR

1. Chandeshwar Mahto S/o Nandan Mahto @ Nandeo Mahto R/o Village - Lalpura,
P.S. -Saraiya, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Reena Sinha, Adv.
Mrs. Shruti Sinha, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-05-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the petitioner has challenged the order dated 9th September, 2015 passed by the learned 4th Additional Sessions Judge, Muzaffarpur in connection with Bochaha P.S.Case No. 22 of 2015 registered under Section 20(b)(ii)(C) of the NDPS Act, whereby he has rejected the application preferred on behalf of the petitioner for release of the truck bearing Registration No. JH 09C-6077.

2. On perusal of the impugned order dated 9th September, 2015, I find that the trial court has rejected the application only on the ground that certain quantity of Ganja was seized from the truck in

question.

3. In my view, the ground taken by the court below for rejecting the application preferred under Section 451 of the CrPC is erroneous in nature. Under Section 451 of the CrPC, the court is empowered to order for custody and disposal of property seized in connection with a criminal case. It reads as under :-

“451. Order for custody and disposal of property pending trial in certain cases.-- When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, “property” includes—

- (a) property of any kind or document which is produced before the Court or which is in its custody.
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

4. A bare reading of Section 451 of the CrPC makes it evident that it clearly empowers the court to pass appropriate orders with regard to the property, such as,

- (i) for the proper custody pending conclusion of enquiry or trial;

- (ii) if the property is subject to speedy and natural decay, to order to be sold or otherwise disposed of after recording such evidence as he thinks necessary.

5. Taking into consideration the provisions prescribed under Section 451 of the CrPC, the Supreme Court in ***Sunderbhai Ambalal Desai [(2002) 10 SCC 290]*** observed in paragraph 17 as under :-

“17. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

6. A similar issue had arisen before this Court in Cr.Misc. No. 28193 of 2015 which has been disposed of by a reasoned order dated 21st April, 2016 after taking into consideration the relevant statutory provisions and the decisions of the Supreme Court in respect of a vehicle seized in connection with a case instituted under the NDPS Act.

7. In view of the ratio laid down in Cr.Misc. No. 28193 of 2015, the impugned order dated 9th September, 2015 passed by the learned 4th Additional Sessions Judge, Muzaffarpur in connection

with Bochaha P.S.Case No. 22 of 2015 cannot be sustained. It is set aside accordingly. The matter is remitted back to the learned 4th Additional Sessions Judge, Muzaffarpur. He is directed to consider the matter afresh in accordance with law after going through the order of this Court passed in Cr.Misc. No.28193 of 2015.

8. It is expected that the court below shall dispose of the matter after hearing the parties expeditiously, preferably within one month from the date of receipt/production of a copy of the order.

9. With the aforesaid observations and directions, the application is disposed of.

(Ashwani Kumar Singh, J)

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