

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3655 of 2016

Arising Out of PS.Case No. -80 Year- 2012 Thana -MINAPUR District- MUZAFFARPUR

Dropadi Devi @ Dropati Devi, wife of Sri Arun Poddar, resident of Village Bhagwanpur, Police Station Bhagwanpur in the District of Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Zonal Director, Narcotics Control Bureau, Bihar, Patna.

.... Opposite Party/s

Appearance:

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate & Mr. Amrit Anurag, Advocate.

For the State : Mr. Anil Kumar, A.P.P.

For the O.P. No. 2 : Mr. Anshuman Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 18-10-2016

Heard the parties.

The petitioner filed this petition under Section 482 of the Code of Criminal Procedure for quashing the order dated 27.02.2014 passed by the 5th Additional Sessions Judge, Muzaffarpur in Minapur P.S. Case No. 80/12 by which the petition of the petitioner for release of the vehicle TATA 407 bearing registration no. BR 9D 9394 was dismissed on the ground that confiscation proceedings was going on before the Collector, Muzaffarpur.

The facts relevant for disposal of this case are that the informant Satish Kumar, Station House Officer of Panapur Out Post, along with other police personnel reached near Pakhnaha Chawk and at about 12:00 O'clock they saw that a white coloured Scorpio, bearing registration no. BR 098-8501, stopped at some distance and thereafter a TATA 407, bearing registration no. BR 9D 9394, also stopped just behind the Scorpio. The driver of the Scorpio managed to flee away with the vehicle but the TATA 407, bearing registration no. BR 9D 9394,



was intercepted and, on search, about 308 Kg. of Ganja was recovered. Driver Vijay Kumar Singh and Vigyan Kumar Mahto were apprehended. They confessed their guilt in indulging in the smuggling of narcotics substance. Niranjana Kumar, the driver of the Scorpio, managed to flee away. The police, after investigation, submitted chargesheet against Vijay Kumar Singh and Vigyan Kumar Mahto on 26.09.2012 and the investigation was kept pending against Arun Poddar, Niranjana Kumar and Bali Ji. During the pendency of the case, the petitioner filed a petition for release of the TATA 407, bearing registration no. BR 9D 9394. After hearing both the parties, the learned 5th Additional Sessions Judge, Muzaffarpur vide order dated 27.03.2014 passed in Minapur P.S. case No. 80/12 dismissed the petition of the petitioner for release of the vehicle on the ground that the confiscation proceeding of the vehicle was pending before the Collector, Muzaffarpur.

Sri Akhileshwar Prasad Singh, learned senior counsel for the petitioner, submits that no confiscation proceeding is pending. The vehicle is not at all required to be detained during the course of trial. Section 451 of the Code of Criminal Procedure provides for custody and disposal of property pending trial. The aforesaid vehicle TATA 407 is lying in the premises of the Police Station and the same is the subject of decayning. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat [(2002) 10 SCC 283]**.

Sri Anil Kumar, learned A.P.P., had twice prayed for adjournment to seek instruction about the pendency of the confiscation proceeding but submitted that till date he has got no instruction from the Collector, Muzaffarpur.

Section 451 of the Code of Criminal Procedure says as follows:-

“451. Order for custody and disposal of property pending

trial in certain cases. – When any property is produced before any Criminal Court during any 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, 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.”

On bare perusal of the provision as contained in Section 451 of the Code of Criminal Procedure, it appears that the learned 5th Additional Sessions Judge has not passed a reasoned order about the release of the vehicle. There is no provision in The Narcotic Drugs and Psychotropic Substances Act, 1985 which authorizes the Collector to initiate any confiscation proceeding. Sections 60, 61 and 62 of the NDPS Act provide the procedure for confiscation of illicit drugs, substances, plants, articles and conveyance. It has been stated that no confiscation proceeding is pending before the Collector, Muzaffarpur and the vehicle is lying in the premises of the Police Station.

The Hon’ble Supreme Court in Para 7 of the aforesaid judgment held as follows:

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining

unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in details; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

On consideration of the facts aforesaid, it appears that the police did not submit chargesheet against the owner of the vehicle. The case of the owner of the vehicle, the petitioner, is that he gave the vehicle on hire basis but the driver of the vehicle was illegally transporting cannabis (Ganja). The investigating officer did not find any material against the petitioner and, that is why, did not submit chargesheet against the petitioner, owner of the vehicle.

Considering the facts aforesaid, I find that the order dated 27.03.2014 passed by the learned 5th Additional Sessions Judge in Minapur P.S. Case no. 80/12 is bad and not sustainable in the eyes of law and, accordingly, the same is set aside and the matter is remitted to the learned court below to pass order afresh within 30 days from the date of this order on the petition for release of the vehicle.

(Prabhat Kumar Jha, J)

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