

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 976 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- PURNIA

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Sanjay Kumar, Son of Late Vijay Bishwas, Village – Gehua, P.O. Makeli – Belgachchi, P.S. Dagarua, District Purnea

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Purnea
4. The Deputy Inspector General of Police, Purnea
5. The Superintendent of Police, Purnea
6. The In-charge/S.H.O., Dagarua P.S., District – Purnea
7. Kosi Auto & Farm Equipments Private Limited, Near Vikash Bazar Bus Stand, Purnea
8. Kotak Mahindra Bank Limited through its Manager (Recovery), Sirsa Chowk, Town & District – Katihar
9. Md. Jafar @ Jafar Hussain, Son of Late Hafizuddin, Resident of Village – Gehuma, P.O. – Makeli – Belgachchi, P.S. Dagarua, District – Purnea
10. Md. Farid, Son of Jari Baksh, Resident of Village – Gehuma, P.O. – Makeli – Belgachchi, P.S. Dagarua, District Purnea
11. Shubham Kumar, Agent/Installment Collector to Kotak Mahindra Bank Limited, Katihar
12. Akhilesh Pratap Singh, Agent/Installment Collector to Kotak Mahindra Bank Limited, Katihar

.... Respondents

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Appearance :

For the Petitioner : Mr. Arun Kumar Lal, Advocate

For the Respondents : Md. Nadeem Seraj, G.P. 5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 05-12-2017

Heard learned counsel for the parties.

The petitioner had filed Dagarua P.S. Case No. 94 of 2016 with allegation that respondent no. 9 Md. Jafar @ Jafar Hussain had forcefully took away his tractor on 30.05.2015 and is keeping the same in his possession.

Thereafter, the present writ application has been filed for



a direction to respondent no. 5, the Superintendent of Police, Purnea and respondent no. 6, the Officer-in-Charge, Dagarua Police Station to seize the said tractor bearing registration no. BR11S-8041 and to release the same in favour of the petitioner.

In pursuance of the order dated 22.11.2017, the Superintendent of Police, Purnea is physically present in Court to explain the non-compliance of the order of the learned court below passed in connection with Dagarua P.S. Case No. 94 of 2016 whereby the court below had directed release of the said tractor.

The Superintendent of Police, Purnea has filed supplementary counter affidavit stating therein that, in fact, the tractor was under hypothecation to the Kotak Mahindra Bank. When the petitioner failed to repay the loan amount, the Kotak Mahindra took away the tractor from the possession of the petitioner and Kotak Mahindra had sold the same in favour of respondent no. 9 Md. Jafar on 02.01.2017. The aforesaid would be evident from the report received from the Transport Department, Government of Bihar regarding ownership of the aforesaid vehicle. Consequently, in pursuance of the order dated 11.09.2017 passed by the learned Additional Chief Judicial Magistrate, Purnea in the aforesaid police case, the tractor was released in favour of respondent no. 9 Md. Jafar on 14.09.2017.



Prima facie, this Court is not satisfied with the assertion of the petitioner that on 30.05.2015 itself respondent no. 9 had snatched the tractor because no complaint of the aforesaid occurrence was made before any authority till expiry of one year from the date of the occurrence. Moreover, this Court cannot inter into the disputed question of fact in exercise of the writ jurisdiction. It has not been disputed that the vehicle was under hypothecation. Hence, till realization of the entire loan amount along with interest, the ownership on the vehicle would be presumed to be with the financier and not of the petitioner. Hence, there is no merit in this application.

Accordingly, it stands dismissed.

Personal appearance of the Superintendent of Police, Purnea is dispensed with.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	07.12.2017
Transmission Date	07.12.2017

