

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34679 of 2013

Arising Out of PS.Case No. -20 Year- 2010 Thana -HATHIDAH District- PATNA

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1. Md. Maksud @ Maksud Alam S/O Md. Bhola @ Bhola Master @ Md. Nazool Islam Resident Of Village Chakbali Salempur, P.S. Barauni Fertilizer, District Begusarai.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha

For the Opposite Party/s : Mr. Md.Nazir Ansari(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 11-01-2017 This application has been filed for quashing order dated 21.05.2013 passed by the learned Sessions Judge, Patna in Criminal Revision No.243 of 2013 whereby and whereunder he affirmed the order dated 05.04.2013 passed by the Judicial Magistrate Ist class, Barh, District- Patna in Hathidah P.S.Case No.20 of 2010 (G.R.No.727 of 2010), refusing to release copper wire and lead plate in favour of the petitioner under Section 457 of the Code of Criminal Procedure.

The prosecution story in short is that the S.H.O., Hathidah during the course of checking the vehicles, on the confidential information that some stolen copper wire is being carried from Lakhisarai to Begusarai, intercepted an Ambassador Car,



thereafter, two persons alighted from the said Car and started fleeing including the petitioner. From the said Car about 150 kg. thick copper wire, 190 kg lead plate and about 16 kg. thin copper wire were recovered.

It appears that later on the petitioner filed an application under Section 457 of the Code of Criminal Procedure for release of the seized copper wire and led on the ground that it is not stolen property rather these were purchased by the petitioner, which the petitioner is claiming from the beginning and the aforesaid petition was heard by the court below and the court below, vide order dated 21.06.2012 passed in G.R. No.727 of 2010, after considering the material available on record dismissed the petition filed by the petitioner for release of the articles.

It further appears that thereafter the petitioner again moved before the court below for release of the seized articles and the learned court below, vide order dated 05.04.2013 again rejected the petition on the ground that it was earlier also rejected.

It also appears from the record that against the aforesaid order dated 05.04.2013, the petitioner had moved before the Sessions Judge, Patna in Criminal Revision No.243 of 2013 and the Sessions Judge, Patna, vide order dated 21.05.2013, after



considering the entire facts, dismissed the revision application of the petitioner, against which the present application under Section 482 Code of Criminal Procedure has been filed for release of the seized articles.

It has been submitted on behalf of the petitioner that no case has been lodged with respect to seized articles and the petitioner has placed documents in support of his case and those articles were purchased property of the petitioner and he was carrying the same by Car but the police arrested the petitioner and seized the purchased articles. It has further been submitted that even nothing is available on record to show that the seized properties are stolen properties, however, the learned Magistrate has not considered the same and dismissed the petition filed by the petitioner.

It has also been submitted that though the petitioner has moved before the Sessions Judge but the Sessions Judge has also not considered the material available on record and dismissed the Revision Application filed by the petitioner. It is also submitted by the petitioners that the petitioner is an electrician involved in various Companies in India since 2002-2008 so he was carrying the copper wire and lead in question, which were purchased through challan dated 19.05.2010 issued by the M/S Jay Ma Tara



Traders, Kolkata, which posses VAT and CST number also but the learned court below has not considered all these facts and dismissed the case of the petitioner, as such impugned order is not sustainable in the eye of law and fit to be set aside.

Heard learned A.P.P. on behalf of the State, who opposes the quashing application, submitting that as a matter of fact this is second Revision Application filed by the petitioner under Section 482 of the Code of Criminal Procedure, just to save themselves from the bar imposed under Section 482 of the Code of Criminal Procedure and there is no error apparent on the record nor order being perverted and illegal. It has also been submitted by the learned A.P.P. that the orders had been passed after considering the materials available on the record.

Having heard both sides, from perusal of the record, it appears that the petitioner had earlier moved before the learned court below, which was rejected after considering the entire facts and also giving findings that the document does not tally with the seizure list and the aforesaid order of the learned Judicial Magistrate was challenged before the Sessions Judge and the Sessions Judge has also confirmed the order of the learned court below. Now the petitioner has filed this application under Section



482 of the Code of Criminal Procedure stating that the documents have not been considered, which does not appear to be true rather it appears that the petitioner after getting unsuccessful in the Revision Application has filed this case under Section 482 of the Code of Criminal Procedure only with a view to escape the bar under Section 397 (3) of the Code of Criminal Procedure. Further from perusal of the whole record, there does not appear to be any error apparent on the record or the order being perverted, rather the same is well considered .

No doubt the application under Section 482 of the Cr.P.C. can be exercised, even after the petitioner has moved for the revisional jurisdiction but that should be exercised in the exceptional circumstances. However, in the present case there is no error apparent on the face of the record not it can be held that the order is illegal, as such I do not find any merit in the application under Section 482 of the Code of Criminal Procedure.

Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

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