

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10405 of 2017

Arising Out of PS.Case No. -22 Year- 2016 Thana -MAUZAHDIPUR District- BHAGALPUR

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1. Subhash Yadav S/o late Rajendra Yadav Resident of Hussainabad, P.S.-
Muzahidpur (Babarganj), District- Bhagalpur. Petitioner/s
Versus

1. The State of Bihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Advocate
Mr. Vijay Anand, Advocate

For the Opposite Party/s : Mr. Pawan Kr. Chaurasia, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 23-03-2017

Heard both sides.

2. The petitioner has filed this petition for quashing the order dated 15.11.2016 passed in Cr. Rev. No. 128 of 2016 by the learned Sessions Judge, Bhagalpur by which the learned Sessions Judge set aside the order of the learned Chief Judicial Magistrate, Bhagalpur dated 11.04.2016 passed in Mozahidpur P.S. case No. 22 of 2016 by which the learned Chief Judicial Magistrate has released the truck bearing registration No. BR10J-7116 in favour of its registered owner, the petitioner, on furnishing security and with condition that he would not sell the truck till further orders.

3. The facts, which are relevant for disposal of this petition, are that the Marketing Officer, Urban Area, Bhagalpur seized two trucks bearing registration Nos. WB57A-3323 and BR10J-7116 and also seized wheat from the truck bearing registration No. BR10J-7116. The petitioner is owner of truck bearing registration No. BR10J-7116. The petitioner filed a petition before the learned Chief



Judicial Magistrate, Bhagalpur for release of the truck. The learned Chief Judicial Magistrate, after calling for a report from the police station, released the truck in favour of the owner/ petitioner, vide order 11.04.2016. The State of Bihar, against the order of release of the truck, filed Cr. Rev. No. 128 of 2016 and the learned Sessions Judge found that there was confiscation proceeding u/s 6 of the E.C. Act pending before the Collector, Bhagalpur and, during the confiscation proceeding, the Chief Judicial Magistrate has no jurisdiction to release the vehicle, by his order dated 15.11.2016 set aside the order of the learned Chief Judicial Magistrate dated 11.04.2016, ordering for release of the vehicle in favour of the petitioner.

4. The learned senior counsel for the petitioner submits that the learned Chief Judicial Magistrate has not committed any illegality as even the State counsel did not inform the court about the initiation of confiscation proceeding, under Section 6 of the Essential Commodities Act. Usually, during the pendency of confiscation proceeding, owner of the truck or any vehicle files Cr. Writ in this court for release of the vehicle and the vehicle is released in favour of the owner, subject to condition that owner of the vehicle shall furnish proper security and he will undertake not to sell the vehicle during the pendency of the criminal case and the confiscation proceeding. The learned senior counsel for the petitioner cited the orders passed in C.W.J.C. No. 5663 of 2016 and L.P.A. No. 1647 of 2015, arising out



of C.W.J.C. No. 2151 of 2015, and submitted that truck has already been released in favour of the petitioner and no useful purpose would be served if the truck is kept in the premises of P.S. till disposal of the criminal case and confiscation proceeding. Therefore, the truck may be allowed to remain with the owner of the vehicle on furnishing security and on undertaking not to sell the truck during the pendency of confiscation proceeding and criminal case.

5. Having heard both sides and after considering the submission of the learned senior counsel for the petitioner as well as the facts of the case, I find that the learned Sessions Judge has set aside the order, releasing the vehicle in favour of the petitioner, on the ground that the learned Chief Judicial Magistrate lacks jurisdiction, during the pendency of confiscation proceeding, but, admittedly, this fact was not brought before the learned Chief Judicial Magistrate at the time of passing the order. I do not find any illegality in the order of learned Sessions Judge but, at the same time, I find that the vehicle has already been released in favour of the petitioner and no useful purpose would be served by directing the petitioner to submit the vehicle in the jurisdiction of police station where it shall lie uncared. Accordingly, I dispose of the quashing petitioning with a direction that let the truck be remained with the petitioner/ owner of the truck on furnishing security and indemnity bond at par with the cost of truck, which is assessed to be 10 lac, with one surety and further on undertaking that petitioner shall not dispose of the truck during the



pendency of confiscation proceeding and criminal case.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	28/03/2017
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