

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44958 of 2016

Arising Out of PS.Case No. -454 Year- 2013 Thana -LAKHISARAI District- LAKHISARAI

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Gopal Kumar Goyal son of Chhabinath Sah, resident of Purani Bazar, Loharpatti,
Police Station and District- Lakhisarai.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan Singh
Mr. Alok Kumar

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

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 22-02-2017

This application under Section 482 Cr. P.C. is for quashing the order dated 16.2.2015 passed in Lakhisarai (Kabaiya) P.S. Case No. 454 of 2013 by the learned Sessions Judge cum Special Court, Lakhisarai, whereby prayer to release the seized vehicle has been rejected.

2. The petitioner claims to be the owner of the seized Scorpio four wheeler, vide Annexure-3 series of the supplementary affidavit, which are copies of retail invoice, and the sale certificate in the name of the petitioner. The vehicle was purchased on 20.12.2012. However, it was not registered in the name of the petitioner till the date of its seizure on 7.11.2013. In the circumstances, when the



petitioner made a prayer before the court below for release of the vehicle, the prayer has been refused by the impugned order on the ground that the vehicle is not registered in the name of the petitioner as well as on the ground that the same is a material exhibit of the case.

3. Learned counsel for the petitioner submits that for non-registration of the vehicle, the petitioner would pay fine as per the law. Till date no other claimant has appeared before the court below to claim the seized vehicle and the petitioner was ready to give indemnity bond of any amount with any other terms and conditions for interim release of the vehicle in favour of the petitioner. Therefore, the impugned order is not sustainable in law, especially in view of the judgement of the Hon'ble Apex Court in the case of **Sunderbha1 Ambalal Desai vs State of Gujarat** [(2002) 10 SCC 283], wherein the Hon'ble Apex Court has held that the powers under Section 451 Cr. P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. The owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. The court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of 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 detail; 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.

4. There is no dispute that no other claimant appeared before the court below to claim seized Scorpio vehicle. The custody to be given during the pendency of the trial of the seized article is in the nature of interim custody. Hence, the court below is competent to impose any condition for non- disposal of the vehicle or its production as and when required as well as the conditions regarding sureties to ensure recovery of amount of the vehicle, if needed. Therefore, I do not agree with the reasonings of the learned court below that since the vehicle is not registered in the name of the petitioner, its interim custody cannot be given to the petitioner. The view of the court below is contrary to the judgment of the Hon'ble Apex Court, above.

5. In the circumstances, the impugned order dated 16.2.2015 passed in Lakhisarai (Kabaiya) P.S. Case No. 454 of 2013 is quashed and it is directed that the interim custody of the vehicle be handed over to the petitioner on petitioner's executing bond of Rs. 10,00, 000/- (Rs. Ten lacs) along with two sureties of the like amount



with condition that the petitioner shall produce registration number of the said vehicle within three months from the date of its release and shall not transfer the same to any one without permission of the trial court and shall produce the same as and when required by the court.

6. With the aforesaid observations and directions, this application is allowed.

(Birendra Kumar, J)

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