# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Criminal Miscellaneous No 23802 of 2016**

Arising Out of PS.Case No. -206 Year- 2015 Thana -CHAKIA District- EASTCHAMPARAN(MOTIHARI)

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Brajesh Kr Srivastava @ Brajesh Kr, Son of Surendra Pd Srivastava, resident of Village – Jamsari, PS – Uchakagaon, District - Gopalganj

.... .... Petitioner/s

Versus

The State of Bihar

.... .... Opposite Party/s

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**Appearance :**
For the Petitioner/s : M/s Ansul & Anuj Kr, Advocates
For the Opposite Party/s : Mr B N Pandey, APP

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**CORAM: HON'BLE MR JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date: 23-03-2017**

Heard both sides.

**2** The petitioner seeks quashing of the order dated 21.11.2015 passed in Chakia Police Station Case No 206 of 2015 by the Chief Judicial Magistrate, East Champaran at Motihari by which the petition of the petitioner for release of the foreign currencies worth Rs 39,12,102.30 P was rejected on the ground that the petitioner had no valid licence to deal in foreign currency. The petitioner preferred Criminal Revision No 23 of 2016/1 of 2016 and the learned Additional Sessions Judge X, East Champaran at Motihari dismissed the revision petition upholding the validity of the order dated 21.11.2015 passed by the learned CJM.

**3** The brief facts, which are relevant for the disposal of this quashing petition, are that one Roshan Kumar alleged that he handed over his voters' identity card and PAN card to Yogesh Mishra, Travel Staff of UAE and Foreign Services Limited (for brevity, *the Company*) in the month of May, 2014 for preparing the passport. The passport was handed over to the informant but the Staff of the Company did not return the voters' identity card and PAN card of the informant. Later on, the informant came to know that staff of the Company forged his signatures and received foreign currency on different dates and thereby accumulated a huge amount illegally. A search was made and from the Bolero vehicle of the Company, different foreign currency worth Rs 39,12,102.30 P was recovered. The office of the Company was also sealed. Police, after investigation, submitted chargesheet.

**4** The petitioner firstly filed petition before the Court below for unsealing the office but his petition was dismissed and, thereafter, the petitioner filed Cr Misc No 54731 of 2015 and this Court, vide judgment and order dated 03.05.2016, set aside the order dated 04th November, 2015 passed by the learned CJM, East Champaran at Motihari and directed the Superintendent of Police, East Champaran at Motihari to unseal the premises of the Company in question.

**5** The petitioner filed petition for release of the foreign currency seized in connection with the aforesaid case but the learned

CJM, vide order dated 21.11.2015, dismissed the petition on the ground that the petitioner had no valid licence on 23.09.2015 that is the date of seizure of foreign currency and institution of the case. The petitioner preferred revision and the learned Additional Sessions Judge X, vide order dated 19.03.2016, dismissed the revision petition upholding the order of the learned CJM.

**6** Mr Ansul, the learned counsel for the petitioner assailed the order impugned on the ground that no useful purpose would be served in detaining the seized foreign currency at the Police Station. The petitioner has got valid licence to deal with foreign currency. His licence was valid up till 31.08.2016 as is apparent from Annexure 2 issued by the Reserve Bank of India, Foreign Exchange Department under Section 42 of the Foreign Exchange Management Act, 1999 (for brevity *FEMA*). The licence was renewed on 04th January, 2016 till August, 2016. Clause 5 of the aforesaid licence clearly stipulates that if the licensee files petition for renewal of his licence, one month before the expiry of the licence, the licence shall be deemed to be in force unless there is specific order for rejection of licence. Even on the date of search and seizure and institution of the case, the petitioner was holding valid licence on the ground that the petitioner had already applied for renewal of licence, one month before the expiry of the licence. It is further submitted that no useful purpose would be served to retain the foreign currency recovered from the possession of the petitioner.

**7** On the other hand, the learned counsel for the State submitted that the petitioner was not having valid licence on the date of search and seizure and institution of the case.

**8** The sole question falls for consideration as to whether the Court is justified in rejecting the petition of the petitioner for releasing the foreign currency notes recovered from the vehicle of the petitioner? Section 451 of the Code of Criminal Procedure (for brevity, *Cr P C*) deals with the custody and disposal of property pending trial in certain cases which reads as follows:

> *"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, and, 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-*
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> *(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."*

**9** From plain reading of Section 451 of Cr P C, it appears that the Court should pass order with regard to the custody or release of the seized articles. Admittedly, the petitioner was having licence to deal in foreign currency and his licence was valid up till 31.08.2016. He applied for renewal of his licence on 04.01.2016, one month before the date of expiry of that licence. From the perusal of Annexure 2 at page 33, it appears that the Reserve Bank of India renewed the licence of the petitioner to deal in foreign currency on 04th January, 2016. The petitioner again applied for renewal of licence and in this interregnum period, it shall be deemed that the licence of the petitioner is valid unless there is express order by the authority concerned to reject the application of the petitioner granting his licence. It also transpires that the petitioner, who is dealing in foreign currency and the aforesaid foreign currency worth Rs 39,12,102.30 P was seized and is kept in the District Treasury. Apparently, no useful purpose would be served in keeping the currency in the District Treasury. Therefore, that currency should be released in favour of the petitioner on providing proper security. It is also a fact that foreign currency is not a material evidence.

**10** Therefore, I find that the rejection of the petition of the petitioner by the Court of learned Chief Judicial Magistrate as well as the learned Additional Sessions Judge X, East Champaran at

Motihari holding that the petitioner has got no licence is illegal and it cannot be allowed to sustain.

**11** Considering the facts aforesaid, the quashing petition is allowed. The order dated 21.11.2015 passed in Chakia Police Station Case No 206 of 2015 and the order passed in Criminal Revision No 23 of 2016/1 of 2016 dated 19.03.2016 are set aside with a direction to the Court below to release the foreign currency in favour of the petitioner on providing security of the same amount with one surety.

**(Prabhat Kumar Jha, J)**

***<u>M.E.H.</u>***/-

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