

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3371 of 2017

Arising Out of PS.Case No. -107 Year- 2016 Thana -GOVT. OFFICIAL COMPLAINT CASE
District- SEKHPURA

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1. Muneshwar Singh, son of Babulal Singh, Resident of Mohalla- Qr. No. KUWA 12 No. Chawk, P.S.- Nandu P.O.- Ghatotand, District- Hazaribagh.

.... Petitioner/s

Versus

1. The State of Bihar . Govt. of Bihar, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dr. Anjani Pd. Singh, Adv.

For the State : Mr. Sri Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 09-03-2017 Heard learned counsel for the petitioner and Sri Jharkhandi Upadhyay, learned Additional P.P. on behalf of the State.

The petitioner filed this petition for quashing of order dated 26.08.2016 passed in Case No. 107C2/2016, by which learned Chief Judicial Magistrate, Sheikhpura dismissed the petition of the petitioner for release of his car bearing Registration No. JH 01Z 7294 and also seeks quashing of order dated 1st October, 2016 passed by the learned 1st Additional Sessions Judge, Sheikhpura in Cr. Revision No. 28/2016. The learned Sessions Judge dismissed the revision petition of the petitioner, preferred against the order of dismissing the petition for release of vehicle.

The vehicle of the petitioner was seized and 2.25 litres of Indian made foreign liquor was recovered. The petitioner filed



petition for release of the vehicle before the learned Chief Judicial Magistrate, Sheikhpura, but the Chief Judicial Magistrate dismissed the petition of the petitioner on the ground that the confiscation proceeding is going on. The petitioner preferred revision petition and the revisional court also dismissed the revision petition on the same ground of confiscation proceeding.

Learned counsel for the petitioner submits that there is no confiscation proceeding pending against seizure of the vehicle and the vehicle is lying uncared in the premises of Excise Office for nine months. The provision contained in Section 451 of the Code of Criminal Procedure specifically provides that *disposal of property pending trial, if the property is subject to speedy and natural decay*. It is submitted that even the confiscation proceeding number has not been provided either in the court of the learned Chief Judicial Magistrate, Sheikhpura or in the revisional court. The case was adjourned at the instance of the learned Additional P.P. to get instruction with regard to the confiscation proceeding, but no such instruction has been initiated.

Mr. Jharkhandi Upadhyay, learned Additional P.P. submitted that there is a provision of confiscation of seized articles under the new prohibition law.

From the facts of the case, it appears that the car of the petitioner was being driven by a driver and small quantity of Indian



made foreign liquor about 2.25 liters was recovered. The petitioner filed a petition for release of vehicle on the ground that no confiscation proceeding is pending. Learned State counsel could not be able to furnish any paper to show that the confiscation proceeding is pending before the Collectorate. In absence of such confiscation proceeding, the vehicle cannot be detained in the premises of the Excise Office. Section 451 of the Code of Criminal Procedure specially mandates that the court should release the vehicle on proper surety, if the property is subject to fast and natural decay. The vehicle is admittedly lying uncared in the premises of the Excise Office.

Therefore, I find that the order dated 26.08.2016 passed by the learned Chief Judicial Magistrate, Sheikhpura as well as the revision order dated 1st October, 2016 passed by the learned Additional Sessions Judge I, Sheikhpura in Cr. Revision No. 28/2016 are not legal. Accordingly, both the orders are set aside.

The learned Chief Judicial Magistrate, Sheikhpura is directed to release the vehicle in favour of the owner of the vehicle bearing Registration No. JH 01Z 7294 after taking proper surety.

The quashing petition is allowed.

(Prabhat Kumar Jha, J.)

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