

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.401 of 2016

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Chuman Mahto, S/o late Badari Mahto, resident of village –
Raghunath Pur, P.S. Ramgarhwa, District - East Champaran.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kr. Pandey, Adv.

For the APP : Mr. Md. Nazir Ansari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

5 09-05-2018 A supplementary affidavit has been filed on
behalf of the petitioner in Court. Let it be taken on record.

The petitioner seeks release of his Auto-
Rikshaw/Tempo, bearing Registration No.-BR-05PA-3371,
which was seized in connection with Raxaul P.S. Case No. 20
of 2016, instituted for the offences punishable under Sections
20, 22, 23 and 24 of the Narcotics Drugs and Psychotropic
Substances Act, 1985 (*hereinafter referred to as the*
N.D.P.S. Act).

The prayer made on behalf of the petitioner for
the release of the aforesaid vehicle was rejected by order
dated 19.03.2016, passed by the learned Sessions Judge-



Cum-Special Judge, East Champaran, Motihari in N.D.P.S. Case No. 04 of 2016.

From the perusal of the First Information Report, it appears that on secret information that the aforesaid Auto-Rikshaw/Tempo is being used for transporting narcotic drugs, a raid was conducted. One Nitesh Kumar was arrested from the seat of the driver and from the Auto-Rikshaw/Tempo referred to above, a packet containing narcotic like substance was recovered. Till the time of lodging of the First Information Report, it has been argued on behalf of the petitioner, the Officer-in-Charge was not certain as to whether the article so recovered from the aforesaid Auto-Rikshaw/Tempo was a narcotic substance.

The First Information Report does not refer to any test by the field testing kit. Be that as it may be, the petitioner, who is the registered owner of the vehicle in question had given the same to Nitesh Kumar, the driver for plying it on the road. There is no evidence whatsoever regarding complicity of the petitioner in the aforesaid occurrence. If at all any narcotic substance was being transported in the aforesaid Auto-Rikshaw/Tempo, the petitioner is not to be blamed for the aforesaid recovery.

Section 60 sub-Clause (2) of the N.D.P.S. Act reads as follows:-

60. Liability of illicit drugs, substances,



plants, articles and conveyances to confiscation.

- [(1) x x x x x x x

(2) Any narcotic drug or psychotropic substance lawfully, produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold alongwith, or in addition to, any narcotic drug or psychotropic substance [or controlled substance] which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance, [or controlled substance] materials apparatus or utensils liable to confiscation under sub-section (1) is found, and the other content, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) x x x x x

No doubt any conveyance used in carrying narcotic drugs and psychotropic substances is liable for confiscation, provided it is proved that the vehicle/conveyance was being used with the knowledge or connivance of the owner himself or his agent.

(emphasis provided)

In the absence of any such material, there cannot be any confiscation in the first instance.

Section 63 of the N.D.P.S. Act, 1985 delineates procedure for making confiscation.

It has been submitted on behalf of the petitioner that there is no material on record to suggest that there was



any complicity on the part of the petitioner. In that event, the question of release of the vehicle would be under the provisions of Sections 451 and 457 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the **Cr.P.C.***) which deal with the power of the Court to order for the disposal/custody of the property pending trial in certain cases and the procedure by the police upon seizure of the property.

Sections 451 and 457 of the Cr.P.C. are being extracted hereinbelow:-

451. Order for custody and disposal of property pending trial in certain cases.– 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.

457. Procedure by police upon seizure of property. – (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.



(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

From the perusal of the aforesaid provisions, it would appear that a Court is empowered to pass an appropriate order with regard to such property. The object and scheme of the various provisions of the Cr.P.C., dealing with the seizure of property by the police has been dealt with by the Apex Court in case of **Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore and Another**, reported in **(1977) 4 SCC 358**, wherein it has been observed in paragraph 4 as hereunder:-

"The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be



returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

In view of the aforesaid, this Court is of the view that the learned Court below did not consider the question of the release of the vehicle in correct perspective.

Learned counsel for the petitioner has stated that the confiscation proceeding has not yet been initiated with respect to the vehicle in question.

In the aforesaid circumstances, therefore, the order dated 19.03.2016, passed in N.D.P.S. Case No. 04 of 2016, arising out of Raxaul P.S. Case No. 20 of 2016, is set-



aside.

The Court below is directed to verify the ownership/registration of the vehicle in question and then pass an appropriate order of release of the same to the petitioner, who claims himself to be the rightful owner of the same, within a period of four weeks of passing of the order.

While saying so, this Court has also taken into account that the Auto-Rikshaw/Tempo is kept in the open in police premises and is subject to deterioration on a daily basis.

The Court below shall also obtain an undertaking from the petitioner that till the disposal of the case, the vehicle in question shall not be disposed off/sold and the petitioner would produce the same before the Trial Court as and when required.

With the aforesaid direction, the present petition stands allowed.

(Ashutosh Kumar, J)

Praveen-II/-

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