

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19250 of 2018

Arising Out of PS.Case No. -10 Year- 2017 Thana -KACHHAWA District- SASARAM (ROHTAS)

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Vinod Kumar Tiwari @ Binod Kumar Tiwari @ Santosh Kumar Tiwari, son of
Late Jagnarayan Tiwari, resident of village- Dharavasadih, P.S.- Karakat, District-
Rohtas. Petitioner/s

Versus

The State of Bihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Om Prakash, Advocate
: Mr. Uday Shankar Pandey, Advocate
For the State : Mr. Nirmal Kumar Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-08-2018

Heard learned counsel for the petitioner and learned counsel
for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for quashing of the order dated 13.12.2017 passed in Cr. Revision No. 315 of 2017 by the learned Sessions Judge, Rohtas at Sasaram whereby he has affirmed the order dated 15.09.2017 passed by the learned Additional Chief Judicial Magistrate, Bikramganj rejecting the petition dated 07.08.2017 filed for release of the Sonalika Tractor bearing Registration No. BR 24G 5476, Chasis No. DZQSC2152393 with trailer bearing registration no. BR 24G 5484 seized by the police in connection with Kachhwan P.S. Case No. 10 of 2017 for the offence punishable, *inter alia*, under Section 379 of the



Indian Penal Code (for short 'I.P.C.').

3. The facts of the case, in brief, are that the aforesaid tractor and trailer were seized by the police on 25.03.2017 along with five other tractors which were coming from Nuawan Balu Ghat on the allegation that they were engaged in carrying illegally mined sand. When the tractor and trailer of the petitioner was intercepted, its driver fled away. Accordingly, the F.I.R. was registered, *inter alia*, under Section 379 of the I.P.C. The petitioner claiming himself to be the registered owner of the tractor and trailer in question filed an application on 22.04.2017 before the court of Additional Chief Judicial Magistrate, Bikramganj, Rohtas for their release. On the said application, a report was called for from the investigating officer of the case. The investigating officer submitted his report stating therein that there is no need of the aforesaid seized vehicle for investigation in the case and he has no objection if the said vehicle is released in favour of the petitioner. However, the Additional Chief Judicial Magistrate vide order dated 19.06.2017 rejected the application preferred by the petitioner on 22.04.2017 on the ground that it does not appear from the report of investigating officer as to whether any confiscation proceeding in respect of the vehicle in question has been initiated or not. Being aggrieved by the order passed by the learned Additional Chief Judicial Magistrate dated 19.06.2017, the petitioner filed a revision application in the court of Sessions. The learned



Session Judge vide order dated 24.07.2017 rejected the application of the petitioner on the ground that chasis number of the tractor of the petitioner did not resemble with the seizure list prepared by the police. Subsequently, a petition was filed by the investigating officer of the case in the court of Additional Chief Judicial Magistrate by which a prayer was made to make correction in the chasis number of the seized tractor of the petitioner. The error in noting down the chasis number in the seizure list was also explained by the investigating officer. After considering the prayer of the investigating officer, the learned Additional Chief Judicial Magistrate vide order dated 28.08.2017 allowed his application by ordering that henceforth chasis number DZOS02152323 shall be read as DZQSC2152393. Thereafter, the petitioner filed an application for release of the vehicle once again in the court of Additional Chief Judicial Magistrate. The said application of the petitioner was rejected by the learned Additional Chief Judicial Magistrate vide order dated 15.09.2017 on the ground that he had no jurisdiction to release the vehicle in the light of the fact that the superior court i.e. the revisional court of the Session Judge had already rejected the application of the petitioner. Thereafter, the petitioner challenged the said order dated 15.09.2017 in the court of Session Judge, Rohtas at Sasaram vide Cr. Revision number 315 of 2017, which was dismissed by the learned Session Judge on 13.12.2017 on the ground that the petitioner had failed to show the



correct registration number of seized tractor including the correct engine number and chasis number.

4. Learned counsel for the petitioner submitted that the finding of the learned Session Judge is erroneous. He contended that there is no dispute to the fact that the petitioner is the rightful owner of the vehicle in question. The investigating officer of the case had also reported that he had no objection if the vehicle in question is released in favour of the petitioner. However, simply because the investigating officer incorrectly noted the chasis number of the vehicle of the petitioner in the seizure list, the prayer of the petitioner was rejected firstly by the learned Additional Chief Judicial Magistrate as also by the learned Session Judge and when investigating officer filed an amendment petition and the same was allowed by the learned Additional Chief Judicial Magistrate and incorrect chasis number was ordered to be read correctly, again the learned Additional Chief Judicial Magistrate rejected the prayer on the ground that he has got no jurisdiction to pass the order after the revisional court has affirmed the order passed by him and rejected the petition filed by the petitioner. Similarly, the revisional court also erred in law as well as on fact in holding that the petitioner has failed to show the correct registration number of the seized tractor including the correct engine number and chasis number.

5. On the other hand learned counsel for the State submitted



that since the petitioner has failed to show the *bona fide* of the ownership of the vehicle before the revisional court, the revisional court has committed no error in rejecting the prayer.

6. I have heard learned counsel for the parties and carefully perused the record. I find substance in the submission of the learned counsel for the petitioner. The petitioner cannot be allowed to suffer because of the reason that the investigating officer while seizing the vehicle incorrectly noted chasis number. The revisional court also failed to appreciate the fact that except the incorrect recording of chasis number in the seizure list by the investigating officer, no other objection was raised by the court of Magistrate initially. Since the incorrect chasis number was already ordered to be read correctly after the application was filed by the investigating officer of the case, he ought to have reconsidered the prayer of the petitioner and allowed the same in view of the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002)10 SCC 283]**; **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002)10 SCC 290]** and the decision of this court in **Shyam Lohia and Anr. vs. State of Bihar [2016(1) PLJR 556]**. In that view of the matter, the order impugned cannot be sustained.

7. Accordingly, the order dated 13.12.2017 passed by the learned Session Judge, Rohtas at Sasaram in Cr. Revision No. 315 of 2017 as well as the order dated 15.09.2017 passed by the learned



Additional Chief Judicial Magistrate, Bikramganj, Rohtas in Kachhwan P.S. Case No.10 of 2017 is set aside.

8. The learned Additional Chief Judicial Magistrate, Bikramganj, Rohtas is directed to hear the application of the petitioner afresh in the light of the observation made hereinabove. He shall be required to pass order on the petition for release of the vehicle in question within a period of four weeks from the date of receipt/ production of a copy of the order after hearing the parties and taking into consideration the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat** (supra) as also by this court in **Shyam Lohia and Anr. vs. State of Bihar** (supra).

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

(Ashwani Kumar Singh, J)

Md.S./-Sanjeev

AFR/NAFR	NAFR
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