IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2366 of 2016

Arising Out of PS.Case No. -77 Year- 2011 Thana -MAHESI District- EASTCHAMPARAN (MOTIHARI)

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1. Ashok Kumar Tiwari son of Sri Ganesh Tiwari resident of Village- 5/13 Bahar Sahara State Gorakhpur P.S. Kharabar District- Gorakhpur. Owner of the Tanker No. WB-23A-3219
2. Tunjee Prasad @ Tunji Son of Sri Teka Prasad Resident of Vill- Chhawahi P.S. Megha Garh District- Gopalganj.
3. Vijay Kumar Mishra son of Late Ramadhar Mishra resident of Village- 5/13 Bahar Sahara State Gorakhpur P.S. Kharabar District- Gorakhpur. Owner of the Tanker No. WB-03B-0614
4. Jawahir Prasad @ Jawahar Lal Sah son of Late Bhagrasan Sah resident of Village- Salempur Main Road P.S.- Sidhwaliya District- Gopalganj.
5. Bishwanath Rai son of Sri Asarphi Choudhary Resident of Village- Bankat, P.S.- Barauli, District- Gopalganj.
6. Sandeep Sharma, Son of Sri Suresh Chandra Sharma Resident of Village- 5/13 Bahar Sahara State Gorakhpur P.S. Kharabar District- Gorakhpur. Owner of the Tanker No. WB-32A-3120. .... Petitioner/s

Versus

1. The State of Bihar .... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Umesh Tiwari, Advocate

For the Opposite Party/s : Smt. Indu Kumari Srivastava(APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

5 05-10-2018 Heard learned counsel for the petitioners as well as learned APP.

2. On account of refusal by the learned lower court to discharge the petitioners under Section 239 CrPC led the filing of the instant petition.

3. On 09.04.2011, three tankers were seized bearing Registration Nos. WB-23A-3219, WB-03B-0614 and WB-23A-3120 laden with Molasses on account of having been parked in suspicious circumstance without having presence of driver or Khalasi whereupon, was kept at police station in order to ascertain its genuineness but, on account of non caring at the end of

respective owners by way of their presence as well as production of relevant documents relating thereto, lastly on 11.04.2011 on the self statement of the police official, Mehsi PS Case No. 77/2011 was registered under different Sections of the IPC as well as under Bihar Molasses Act. During course of investigation by an order of the criminal court the respective tankers along with Molasses were released after having a report at the end of the Excise Superintendent divulging the fact that the aforesaid transportation was being carried legally under the valid permit issued at their end. From the case diary, it is evident that those documents are available along with the same, even then, the I.O. had submitted charge-sheet and in likewise manner, cognizance was also taken and further, the prayer of the petitioners stood rejected for discharge as provided under Section 239 of the CrPC.

4. As per Section 239 CrPC while considering the prayer, the court has to hear the prosecution as well as accused and then after filing the same in consonance with the material so placed in accordance with Section 173 CrPC, the Magistrate has to form an opinion.

5. After going through the record, it is manifest that the document is itself tagged with the case diary in pursuance of Section 173 of the CrPC. That being so, the learned lower court should have gone through the same in order to verify whether Molasses were being transported under valid permit or not. Once

there happens to be valid permit, in that circumstance, no offence irrespective of submission of charge-sheet, would be made out.

6. From the document it is evident that Excise Superintendent vide Letter No. 569 of 2011 had reported that the aforesaid tankers were allowed to transport the Molasses from Sasamusa to Riga Sugar factory under Pass Nos. 291 dated 08.04.2011, 292 dated 08.04.2011, 292 dated 08.04.2011. It is also evident from the order issued by Joint Secretary, Excise, Government of Bihar that Riga Sugar Company Limited was allowed to procure Molasses from different sugar factory including Sasamusa vide order no. 280 dated 28.02.2011 and the same was valid up to 30.04.2011. The cash memo having been issued by Sasamusa Sugar Factory apart from others, also discloses payment of VAT and other Taxes so required. The most surprising feature as found from the case diary is the activities of the Investigating Officer. Having presence of document over the case diary, it reveals that Investigating Officer did not care to investigate over the same even after receipt of release order passed by the Court. The learned lower court as is evident did not act in true spirit of Section 239 CrPC as perceived from the order impugned.

7. Accordingly, rejection of the prayer by the learned lower court is not at all found in accordance with law, whereupon, the same is set aside. Petition is allowed. Matter is remitted to the

learned lower court for proper appreciation in accordance with law.

(Aditya Kumar Trivedi, J)

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