

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.844 of 2018

Arising Out of PS. Case No.-88 Year-2015 Thana- DARBHANGA SADAR District-
Darbhanga

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1. Ramanand Singh, son of Ram Jag Singh, resident of Chakmohammad Chisti, P.O.- Jarua, P.S.- Ganga Bridge, District- Vaishali.
 2. Nitu Kumari, wife of Jai Prakash Singh, resident of Village-Harpur Kasturi, Varispur Mal, District- Vaishali.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Home Secretary, Department of Home, Government of Bihar, Patna.
3. The Superintendent of Police, Darbhanga, Bihar.
4. The Officer-in- Charge, Mobbi O.P., P.S.- Sadar, District- Darbhanga.
5. The Superintendent, Customs (Prev.) Circle, Darbhanga, District- Darbhanga.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Nawnit Kumar Tiwary, Advocate
For the Respondent/s	:	Mr. Parth Sarthi (GA4)
		Mr. Mringendra Kumar AC to G.A.-4
For the Customs	:	Mr. Stya Prakash Tripathi, Sr. S.C. Customs.
		Mr. Satya Vrat, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

5 24-07-2018 The present writ application has been preferred seeking release of the vehicles (white colour Bolero Pick-up-Van No. BR31GA/1060 and white colour Xenon Pick-up Van No. BR31G/9282) in favour of the petitioners. These two vehicles were allegedly seized by the Officer-in-Charge of Mobbi O.P., Sadar Police Station, Darbhanga (respondent no. 4) in connection with Sadar (Mobbi O.P.) P. S. Case No. 88 of 2015 registered under Sections 413, 414, 419, 420/34 of the



Indian Penal Code and Section 136 of the Customs Act. The allegation is that the vehicle was intercepted when it was involved in carrying betel nuts from Nepal which is a contraband betel nut. Petitioner no. 1 is the owner of Vehicle No.BR31GA/1060 whereas the petitioner no. 2 is the wife of deceased owner Jai Prakash Singh of vehicle bearing regd. no. BR31G/9282. The vehicles were allegedly stopped and seized on 09.03.2015 by the Police officials when their illegal demands from the drivers of the vehicles were not fulfilled. The first information report was instituted. Later on the drivers of the vehicles and one of the owners moved this Court by filing Criminal Writ Jurisdiction Case No. 381 of 2015 for transfer of the case from Darbhanga Police Station to the Customs Department and for other consequential reliefs as according to them the case registered under the Customs Act may be dealt with only by the Customs office. The said writ application was disposed of taking note of the submission of the then learned Additional Advocate General No. 2 that the authorities of the Darbhanga Police have been directed to transfer the case to the authorities of the Customs Department to be dealt with by them in accordance with the provisions of the Customs Act.

2. This is the case of the petitioners that despite their



being a clear undertaking of the learned the then Additional Advocate General No. 2 duly recorded in Cr. W.J.C. No. 381 of 2015 on 08.05.2015, the authorities concerned has not handed over the case to the Custom Department.

3. While still seeking clarity over the authority who will competent to investigate the case, the petitioner has moved this Court with a submission that over the period of more than three years, the petitioners have found it difficult to get the vehicles released due to lack of clarity on the authority who will investigate the matter. In this regard on the last date when the matter was taken up on 03.05.2018, this Court while recording the submission of learned counsel for the State as well as the Customs noted the submission of the petitioner that the vehicles are lying under open sky and was losing their road worthiness for last over three years. The State was granted time to file its counter affidavit.

4. Again on 11.05.2018, the Court directed for service of two copies of complete brief on Mr. Satya Prakash Tripathi, learned Senior Standing Counsel representing the Department of Custom and learned counsel was called upon to seek instruction as to whether or not the record of the case has been received in the Department of Custom till date. Again on



03.07.2018 when the matter was taken up, this Court found from the counter affidavit filed on behalf of the State that as per their claim the records have already been made available to the Customs Department and attention of this Court was drawn towards Annexure-G to the counter affidavit wherein certain remarks were made in this regard.

5. At that stage, Mr. Tripathi learned Senior Standing Counsel for the Customs Department took time to seek instruction and file reply as also that in the mean time the Custom Department will move an application in the court below for a direction to hand over the possession of the vehicles and betel nut in the Department. This Court while taking note of the situation created by the two authorities i.e. the Police authorities of Darbhanga and the Department of Customs pointed out that because of the laches on their part, the vehicles are lying in open sky for three years and they are losing its road worthiness, therefore, the Court cannot wait for an indefinite period before passing of final order. As a matter of last indulgence the case was directed to be listed on 20th July, 2018. Both the State as well as the Customs Department were directed to come ready with their respective stand as regards transfer of the records, vehicles and the betel nut and further as to why not



the vehicles be ordered to be provisionally released.

6. Today, learned counsel for the State stated that so far as the Police authorities of Darbhanga are concerned, they are not in seisin of this matter as they have already transferred the records of the case, therefore, he cannot have any objection as regards the release of the vehicles.

7. Mr. Tripathi, representing the Department of Customs, has simply placed before this Court a copy of petition filed before the court of learned Chief Judicial Magistrate, Darbhanga in which a prayer has been made to direct the Police to hand over the case along with the betel nut and vehicles at the earliest. It is stated that the application filed by the Department of Customs in the court of learned Chief Judicial Magistrate, Darbhanga is still pending consideration.

8. Mr. Tripathi, learned Senior Standing Counsel representing the Department of Custom, at this stage, informed this Court that in fact, the records of the case were sent from the court of learned Chief Judicial Magistrate, Darbhanga to the office of the Department of Customs which was received by a Hawildar of the Department and the same was kept by him without bringing it to the notice of the superior officers and hence, no further steps could be taken in the department of



custom.

9. In the aforementioned peculiar facts and circumstances of the case wherein this Court finds that there is no end of confusion between the two authorities who are involved in this case and that the vehicles are lying under open sky for more than 3 years, no fruitful purpose will be served by allowing the vehicles to get further damaged day by day and lose their road worthiness. A period of more than three years is a substantial period during which the vehicles must have lost most of its worth. At this stage, therefore, the Court is required to exercise its extra ordinary writ jurisdiction to direct the provisional release of the vehicles in question in favour of the petitioners on their showing document of ownership and registration as stated above along with two sureties (not in the form of cash or bank guarantee).

10. In these circumstances, as suggested at the Bar, the vehicles in question is directed to be released provisionally on furnishing of two sureties to the extent of the value of the vehicles as indicated in their insurance document of relevant time (not in the form of cash or bank guarantee) to the satisfaction of the Assistant Commissioner, Department of Custom, Legal (P), Muzaffarpur.



11. This writ application stands disposed of with the
aforesaid direction.

(Rajeev Ranjan Prasad, J)

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