IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3556 of 2018

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Rambriksha Sah, Son of Late Kunjilal Sah, Resident of Village Godamtol, P.O. Mahatha, P.S.- Ladania, District- Madhubani.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Senior Superintendent of Police, Madhubani.
4. The Sub-Divisional Police officer, Jainagar, District- Madhubani.
5. The Sub-Divisional Magistrate, Jainagar.
6. The Officer In-charge, Basopatti, Police Station, District- Madhubani.
7. Union of India, through Secretary, Department of Central Excise and Custom, Govt. of India, New Delhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate
		Mr. Shakti Suman Kumar, Advocate
For the State	:	Mr. Manish Dhari Singh, A.C. to A.G.
For the U.O.I.	:	Mr. S.D. Sanjay (Addl. S.G.)
		Mr. Anshay Bahadur Mathur, C.G.C.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-08-2018

Seeking release of a vehicle (Mahindra Pick Up Van) seized by the authorities of Basopatti Police Station, District- Madhubani bearing Registration No. BR-07-GA 2976 in connection with Basopatti P.S. Case No. 152/17 for the offences under Sections 7, 11 and 51 of the Customs Act, 1962, 3(2) of the Foreign Trade Development Regulations Act, 1992 and Section 414 of the Indian Penal Code, this writ petition has been filed and the prayer made is that the vehicle along with seized goods should be released.

On notice being issued, a counter affidavit has been filed by the Collector of the District and the police authorities and they say that on 11.08.2017 the vehicle in question was seized in the Indo-Nepal Border and on search of the vehicle certain articles like shoes, candies, biscuits, cloths etc. were found which were found to be transported in violation to the Customs Act and the Foreign Trade Development Regulations Act and, therefore, the police authorities seized the vehicle, apart from the provisions of the Customs Act and the Foreign Trade Development Regulations Act under Section 414 of the Indian Penal Code .

It is further the case of the State Government and the police authorities that they found the vehicle to be crossing the boarder without valid document and, therefore, finding violation of the statutory provision the vehicle has been seized. On notice being issued the authorities of the Central Government, statutory in nature, empowered under law to enforce the provisions of the Customs Act, 1962 and the Foreign Trade Development Regulations Act, 1992 on instructions through their counsel informed this Court that they are not at all aware of any such case, seizure being made or offence committed, as is indicated in petition or in the return filed by the Collector and the police authorities.

On proper instruction and on a clarification sought by this Court on two occasions, counsel representing the Customs Department plead their ignorance with regard to any such case being registered or intimation received by them with regard to any such offence committed.

That being so, it is a fit case where the power has been exercised by the police authorities under the Customs Act and the Foreign Trade Development Regulations Act, 1992 and admittedly the police authorities and the local Government does not have any power under law to either search, seize or confiscate the vehicle in question and it is only the statutory authorities functioning under the Customs Act who can take action in the matter.

The Collector (Respondent No. 2) in his counter affidavit after notice from this Court comes out with a case that he has directed the Superintendent of Police to hand over the entire material to the Customs authorities and Annexure-A to the said counter affidavit indicate that it has been done on 21.07.2018 much after notices were issued by this Court.

That being so, it is a case where in an unauthorized and illegal manner usurping the power which was not available to them either under the Customs Act of 1962 or under the Foreign Trade Development Regulations Act, 1992 the vehicle in question along with its 11 cartons of chocolates and candies, 6 bundles of cloths and 6 bundles of shoes and slippers have been seized by the authorities. This is an illegal seizure and this cannot be permitted under law, and therefore, we direct the Respondent No. 3 ad 6 to immediately release the vehicle in question along with all the goods to the petitioner within 24 hours of production of a certified copy of this order. It is a fit case where compensatory cost should have been granted to the petitioner for the illegal act of the respondents but in the facts and circumstances of the case, warning the authorities to be careful in future, we, for the present, do not impose any cost. However, because of the illegal seizure if any damage has been caused to the petitioner either to the vehicle or the goods seized, the petitioner will have liberty to seek damages and compensation from the authorities by taking recourse to such procedure as may be permissible under law.

As far as taking action on account of offence under Section 414 I.P.C. is concerned, the said offence pertains to concealing or disposing of or making away with property which a person knows to be a stolen property. No case from the material available on record is made out to show existence of any ingredients which remotely makes an offence under Section 414 I.P.C. and, therefore, it is a case where an illegal action has been taken by the police authorities for seizure of the vehicle for reasons which remained unexplained.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-Priyanka

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	06.08.2018
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