

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60497 of 2017

Arising Out of PS. Case No.-172 Year-2010 Thana- MUFFASIL District- Aurangabad

Prabhu Narayan Jha, S/o Late Surya Narayan Jha, R/o Village- Sirva, P.S.-
Baheri, District- Darbhanga Bihar, at present R/o Mohalla- 177 A, Gali No.2,
Near Kali Mandir, Kushak No. 2, Kadipur, P.S.- Swaroop Nagar, North West
New Delhi- 110036.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Vedanand Mishra, Enforcement Sub-Inspector, S/o Sarjug kant Mishra, R/o
Village- lahata, P.O.- Lahata, P.S.- Manigachh, District- Darbhanga, at
present posted as Enforcement Sub- Inspector, Transport Department, Bihar,
Patna, Camp- Aurangabad.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Sinha, Advocate
For the Opposite Party/s : Mr. Sri Gauri Shankar Gupta, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 13-12-2019 This application has been filed against the order dated

06.12.2010 passed by the learned Chief Judicial Magistrate,
Aurangabad in connection with Mufassil P. S. Case No. 172 of
2010, dated 24.09.2010, by which, the cognizance was taken
under Section 3 (2-e) of Prevention to Damage of Public
Property Act, 1984.

Prosecution story in short is that truck of the
petitioner was intercepted by the police with over loading of
14585 Kg and as such, a case has been lodged and after
investigation charge sheet has been submitted.

Submission of learned counsel for the petitioner is



that there is no report available on the record to show that there was any excess load over the truck and in absence of that taking cognizance under Section 3(2) (e) of the Prevention to Damage of Public Property Act is an abuse of process of the court.

Heard learned APP also, who has opposed this application.

Having heard both sides and perused the record, from perusal of the F.I.R. it appears that truck of the petitioner was intercepted by the police, which was put on Dharamkata and the weight of the vehicle along with goods was found 39585 kg whereas the maximum weight allowed is 25000 kg and as such, in excess of 14585 kg. It further appears that in the F.I.R. weight measured by the Dharamkata is also part of the F.I.R.

Considering the above facts, at present there appears a *prima facie* case against the petitioner. Accordingly, cognizance taken under Section 3(2) (e) of the Prevention to Damage of Public Property Act, 1984 is correct. As such, I find no merit in this application.

Accordingly, this application stands dismissed.

(Vinod Kumar Sinha, J)

Sunil Shukla/-

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