

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.641 of 2019

Arising Out of PS. Case No.-475 Year-2016 Thana- KISHANGANJ District- Kishanganj

Md. Awar, Son of Raisuddin, Resident of Village-Sontha, P.S.- Kochadhaman,
District- Kishanganj.

... .. Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Food and Civil Supply, Government of Bihar, Patna.
3. The Director, Food and Civil Supply, Government of Bihar, Patna.
4. The District Magistrate - cum-Collector, Kishanganj.
5. The Superintendent of Police, Kishanganj.
6. The District Supply Officer, Kishanganj.
7. The District Transport Officer, Kishanganj.
8. The Sub-Divisional Officer, Kishanganj.
9. The Block Development Officer, Kishanganj.
10. The Block Supply Officer, Kishanganj, District- Kishanganj.
11. The S.H.O., Police Station Kishanganj.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Bajarangi Lal, Advocate Mr. A.K. Ghosh, Advocate
For the Respondents-State:		Mr. Arvind Ujjwal, SC-4 Mr. Upendra Pratap Singh, AC to SC-4

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 23-04-2019

This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing the respondents to release the truck bearing Registration No.BR 11S 5434, which has been seized in connection with Kishanganj P.S. Case No.475 of 2016 registered for the offences punishable



under Section 7 of the Essential Commodities Act on the allegation of carrying 46 bags of rice and 52 bags of paddy.

2. It is submitted by the learned counsel for the petitioner that that till date no confiscation proceeding has been initiated for confiscation of the vehicle in question. The petitioner had filed an application in the court of Sub Divisional Judicial Magistrate, Kishanganj for release of the vehicle in question. The said application was rejected vide order dated 23.07.2018.

3. There is no prayer in the writ petition for setting aside the order passed by the learned Sub Divisional Judicial Magistrate.

4. Against the order passed by the learned Sub Divisional Judicial Magistrate, the petitioner has a remedy of revision. It is not clear from the writ petition as to whether any revision application was filed by the petitioner either before the Session Court or before this Court challenging the order passed by the learned Sub Divisional Judicial Magistrate.

5. In case of maintainability of a revision application or an application under Section 482 of the Code of Criminal Procedure before this Court, in view of the Special Bench judgment in the matter of **Surendra Singh & Ors. vs. The State of Bihar and Ors [(1990) 2 PLJR 693]**, an application under



Article 227 would not be maintainable. Similarly, in view of the ratio laid down by a Full Bench of this Court in **Baleshwar Roy vs. State of Bihar & Ors. [LPA No.1647 of 2015]**, the instant application under Articles 226 and 227 of the Constitution of India is not maintainable.

6. Accordingly, the application is disposed of as not maintainable with liberty to the petitioner to assail the order passed by the learned Sub Divisional Judicial Magistrate either under Section 397 and 401 or under Section 482 of the Code of Criminal Procedure if such a remedy has not been availed of earlier.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2019
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