

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43629 of 2013

Arising Out of PS. Case No.-274 Year-2011 Thana- CHIRAIYA District- East Champaran

Md. Abdullah S/O Md. Islam Mian Resident Of Village- Gamhariya, P.S-
Darpa, District- East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shekhar Singh S/O Late Dhrup Singh Resident Of Village- Jogiraha, P.S-
Singhwalia, District- Gopalganj.
3. Atahul Rahman S/O Md. Kaiyum Resident Of Village- Fataha, P.O-
Gopalganj, P.S- Gopalganj, District- East Champaran. At present, Atahul
Rahman S/o Md. Kaiyum, Plot No. 275, Co-operative Colony, P.S. B.S. City,
District- Bokaro.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Md. Arif, APP
For the O.P. No. 2	:	Mr. Subodh Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 17-01-2019

Heard learned counsel for the petitioner; learned A.P.P.

for the State and learned counsel for the opposite party no. 2.

2. Though notice was issued to opposite party no. 3 by
the Court, service has not been effected.

3. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That the present application is being filed
on behalf of the petitioner before this
Hon’ble Court for quashing the order dated
04.09.2012 passed by the learned Sri S.K.
Jha, Judicial Magistrate, 1st Class, Sikrahana
at Motihari passed in G.R. No. 1536/2011,
arising out of Chiraiya P.S. Case No. 274/11*



(Tr. No. 3780 of 2012) as well as for quashing the order dated 25.05.2013, passed in Cr. Rev. No. 307/05 of 2012/13, passed by the learned Sri Ajay Kumar Shrivastava, 2nd Additional Session Judge, East Champaran, Motihari whereby and where under the prayer made by the petitioner regarding the released of the vehicle bearing Registration No. JH09F-1414, has been dismissed without considering the facts and circumstances of the case.”

4. The opposite party no. 3 had filed Chiraiya P.S. Case No. 274 of 2011 alleging that the opposite party no. 2 had taken the Scorpio vehicle belonging to him on the pretext of marriage in the family assuring him that he would return the vehicle but when the same was not returned and the opposite party no. 3 went to the place of opposite party no. 2, he was told that the vehicle was stolen but assurance was given that it would be located or money paid. It was further alleged that the opposite party no. 3, on making enquiry, found that the vehicle was with the petitioner having been sold by the opposite party no. 2 for Rs. 3,42,500/-. The vehicle was seized by the police pursuant to lodging of the F.I.R.

5. Learned counsel for the petitioner submitted that he had filed an application for release of the vehicle on the ground that initially the opposite party no. 3 had himself sold the vehicle to the opposite party no. 2 under agreement dated 13.11.2008 and



later on the opposite party no. 2 had sold the vehicle to the petitioner on 09.11.2009. Learned counsel submitted that the ownership of the vehicle could not be transferred as the opposite party no. 3 had taken loan from the ICICI Bank and, thus, till the liquidation of the loan, the ownership of the vehicle could not be transferred.

6. Learned A.P.P. submitted that the prayer made for release of the vehicle is misplaced for the reason that till date, neither there is any transfer of ownership in favour of the opposite party no. 2, muchless the petitioner who claims to have bought the vehicle from the opposite party no. 2. It was submitted that even the theory of sale by the opposite party no. 3 in favour of opposite party no. 2, the same is doubtful for the reason that the so called agreement dated 13.11.2008 has not been signed by the opposite party no. 2 as obviously, the moment there is an agreement between the parties, the first requirement is that the parties have to sign the document, which in the present case has not been done. Further, it was submitted that even the so called sale by opposite party no. 2 in favour of the petitioner, as per the claim on 09.11.2009, there is nothing to show that the onus of the owner of the vehicle of paying tax to the government, getting pollution control checks and getting the vehicle insured, has been



discharged, either by the petitioner or the opposite party no. 2, and thus, the defence of them having purchased the vehicle from the opposite party no. 3 cannot be accepted. Learned counsel further submitted that even as per the agreement which the opposite party no. 2 claims to have been made by the opposite party no. 3 in his favour, with regard to sale of vehicle, the same discloses that he had paid Rs. 5,10,000/- to the opposite party no. 3 and if the same was done in November, 2008, till December, 2011, when the F.I.R. was lodged, there is nothing on record to show what the opposite party no. 2 had done to ensure that the opposite party no. 3 got the vehicle free from the loan of the ICICI Bank and for transfer of the vehicle in his name.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The only relief sought by the petitioner is for release of the vehicle in his favour. In law, the only document to prove the ownership of the vehicle is the certificate issued by the Transport Department, i.e., Certificate of the Registration. Even on admitted position, till date the ownership of the vehicle stands in the name of opposite party no. 3. Thus, till such time the name of any other person is not duly entered in the official records and reflected in the Certificate of



Registration, with regard to the vehicle, a Court of law would not release the vehicle in favour of a person who comes with a piece of paper purporting to be an agreement /sale of the vehicle, that too, which is unregistered.

8. In view thereof, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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