

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1117 of 2018

Arising Out of PS. Case No.-211 Year-2017 Thana- MOHIUDDIN NAGAR District-
Samastipur

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Rizwan Alam son of Manjur Alam, resident of village-Madarpur, Jalalpur,
P.S.-Basantpur, District- Siwan at present residing at 133/134 B.T. Road,
Baranagar (N), P.S.-Baranagar, District- North 24 Pargana (West Bengal)

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police
2. The Superintendent of Police, Samastipur
3. The Superintendent of Police, Siwan
4. Station House Officer, Mohinuddinpur Police Station, District- Samastipur
5. Station House Officer, Bhagwanpur Police Station, District- Siwan
6. Ramdayal Rai son of Late Chulhai Rai, resident of village- Madudabad,
P.S.-Mohiuddin Nagar, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar, Advocate
	:	Mr. Binod Kumar Sinha, Advocate
For the State	:	Mr. Sanjay Kumar Ghosarway, AC to AAG-3
For the Respondent no.6	:	Mr. Anil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 13-03-2019

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for respondent no.6.

2. By way of the present writ petition, the
petitioner has prayed for a direction to respondent nos. 2 to 5 to
release the truck bearing registration no. BW 53A-4247.



3. Learned counsel appearing for the petitioner submitted that the petitioner is the registered owner of the truck in question. His driver Raju Yadav was the in-charge of the vehicle on 15.12.2017. On the said date, the said truck was loaded with 266 bags of rice belonging to M/S Ganpati Traders and the rice was consigned to be delivered at North Dinajpur, Koliyaganj, West Bengal. The said driver along with his brother, a cleaner proceeded with the truck, but the truck did not reach to its destination at North Dinajpur, Koliyaganj, West Bengal. Subsequently, the petitioner came to know that the truck is lying in Bhagwanpur Police Station. There is no case pending against him in Bhagwanpur Police Station. There is also no seizure list prepared by the police and the truck is being kept illegally in the police station and if the same would not be released, it would turn into junk.

4. On the other hand, learned counsel for the State submitted that on 20.12.2018, at 10:00 a.m., the Officer in-Charge of Bhagwanpur Hat Police Station had received a confidential information that the truck is lying abandoned in village Sultanpur. Upon receipt of such information, he sent one Shailendra Kumar Rai, Sub-Inspector of Police along with the police party to village Sultanpur and found the truck in question



lying abandoned. Since there was no claimant of the truck, the police brought it to the police station. A station diary entry vide station diary entry no. 388 dated 20.12.2017 was made in this regard. Subsequently, a police officer of Mohiuddin Nagar Police Station of Samastipur came and stated that the said truck is related to Mohiuddin Nagar P.S. Case No. 211 of 2017 dated 25.12.2017. However, the Mohiuddin Nagar police never came to take truck in question and since then the truck is lying at the Bhagwanpur Hat Police Station.

5. Mr. Anil Kumar, learned counsel appearing for the respondent no.6 submitted that on 15.02.2017 the respondent was looking for a vehicle to transport 266 bags of rice from his business premises at Mohiuddin Nagar to a consignee, namely, M/S Trading Zone, Koliyaganj, North Dinajpur, West Bengal. At the truck stand, the petitioner along with driver and cleaner of the truck in question approached the respondent and assured that after unloading some consignment at Mohiuddin Nagar, the truck had to return to West Bengal. Hence, he would charge very reasonable fare. Since the truck was bearing registration number of West Bengal, the respondent no.6 handed over 266 bags of rice weighing 160 quintals valuing Rs.3,36,800/- to the petitioner to transport the consignment on his truck. However, the consignment



mentioned above failed to reach at its destination and the same was sold by the petitioner in complicity with his driver, Raju Yadav and cleaner and empty truck was left abandoned, and was seized by the police. He contended that a case of cheating, dishonest misappropriation of property and criminal breach of trust has been instituted by the respondent no.6 against the petitioner vide Mohiuddin Nagar P.S. Case 211 of 2017. On the basis of aforesaid submissions, learned counsel for the respondent no.6 submitted that since the petitioner is an accused in a criminal case and trial is yet to commence, it would not be proper to release the truck, in question, in his favour.

6. On query, as to whether the truck, in question, has been seized in connection with Mohiuddin Nagar P.S. Case No. 211 of 2017, he fairly conceded that no such seizure has been made in connection with the said case.

7. In reply, learned counsel for the petitioner submitted that in connection with the said Mohiuddin Nagar P.S. Case No. 211 of 2017, the petitioner has already been granted pre-arrest bail by this Court vide Cr.Misc. No. 57951 of 2018 and till date, the vehicle has not been seized by the investigating officer of the said case.



8. I have heard learned counsel for the parties and carefully perused the record.

9. The admitted case of the parties is that the truck has not been seized in connection with any criminal case. It has been brought to the police station as it was lying in an abandoned condition. The petitioner claims himself to be the registered owner of the vehicle in question. In support of his claim, he has brought on record a photostat copy of certificate of registration of heavy goods vehicle bearing registration no. WB 53A 4247. The ownership of the vehicle, in question, is not disputed either by the State or by the respondent no. 6. Though the petitioner has been made an accused in connection with Mohiuddin Nagar P.S. Case No. 211 of 2017, the truck, in question, has not been seized in connection with that case. Merely because the petitioner has been made accused in connection with Mohiuddin Nagar P.S. Case No. 211 of 2017, the truck cannot be detained by the police.

10. Once the claimant of the abandoned property has approached the police and there is no dispute regarding the ownership of the property, the property cannot be detained by the police even for a moment.



11. In that view the matter, I direct the respondent nos.3 and 5 to release the heavy goods vehicle bearing registration no.BW 53A-4247 immediately on receipt or production of a copy of this order to the custody of the petitioner.

12. Registry is directed to send a copy of the order to the Superintendent of Police, Siwan forthwith.

(Ashwani Kumar Singh, J)

Md. S/SKSuman

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.03.2019
Transmission Date	25.03.2019

