

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.1146 of 2019**

Arising Out of PS. Case No.-160 Year-2019 Thana- RAHUI District- Nalanda

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Lal Mohan Rana, S/o Mahadev Rana, Resident of Village-Janpur Sapahi, P.S.-  
Kodarma, District- Kodarma (Jharkhand).

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Mines Department, Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Superintendent of Police, Nalanda.
4. The Mines Development Officer, District Mining Office, Nalanda.
5. The Officer- in-Charge, Rahui.
6. The Officer in Charge, Bhaghan Bigha.

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mr. Mrigendra Kumar, Advocate  
For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 19-08-2019**

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 04.07.2019 passed by the learned A.C.J.M., Biharsharif, Nalanda whereby he has rejected the petition to release a truck bearing registration No.JH-12J-8082, which was seized in connection with Rahui (Bhaghan Bigha) P.S. Case No.160 of 2019 registered under Section 379 of the Indian Penal Code, Rule 4, 5(a), 5(c) and 8(a) of Bihar Minor Minerals Act, 2003.



2. It has submitted by the learned counsel for the petitioner that the First Information Report (for short 'FIR') has wrongly been registered under the Bihar Minor Minerals Act, 2003. He contended that there is no such Act in existence. He has further contended that the petitioner is the registered owner of the truck bearing registration No.JH-12J08082, which has illegally been seized in connection with Rahui (Bhagan Bigha) P.S. Case No.160 of 2019. The application filed by the petitioner under Section 451 of the Code of Criminal Procedure (for short 'CrPC') for release of the vehicle has wrongly been rejected by the learned A.C.J.M. Biharsharif, Nalanda on the ground that the Assistant Sub Inspector of Police, who is investigating the case has reported that he had filed a petition for confiscation of the vehicle in question. He pleaded that mere filing of an application for confiscation would not debar the court from passing an order of release of the vehicle in question.

3. On the other hand, learned counsel appearing for the State submitted that due to inadvertence the police have registered the case under the various provisions of the Bihar Minor Minerals Act, 2003. He contended that as a matter of fact the allegations made in the FIR would attract the ingredients of the offences punishable under Sections 4, 6(5)(a) and (c) of the Bihar Minerals



(Prevention of Illegal Mining, Transportation and Storage) Rules, 2003. He has further contended that merely because FIR has been instituted under the wrong provision of law, the same would make no difference if the offence attracts ingredients of a cognizable offence. As far as merit of the case of the petitioner is concerned, he has raised a preliminary objection regarding maintainability of the application under Article 227 of the Constitution of India. He contended that the petitioner has not taken a plea that order passed by the jurisdictional Magistrate is without jurisdiction. In that case, the petitioner ought to have filed an application under Section 397 and 401 or under Section 482 of the CrPC. He submitted that in case the order impugned can be challenged under Section 397 and 401 or Section 482 of the CrPC, there would be no occasion for filing an application under Article 227 of the Constitution of India. In this regard, he has placed reliance on the Special Bench judgment of this Court in **Surendra Singh vs. State of Bihar [1990 (2) PLJR 693]**.

4. Having heard learned counsel for the parties and perused the record, I find substance in the submission of the learned counsel for the State.

5. There is no dispute to the fact that the order passed by the Magistrate is not without jurisdiction. It is the petitioner,



who had invoked the jurisdiction of the Magistrate under Section 451 of the CrPC. The learned Magistrate rejected his application vide order dated 04.07.2019, which is under challenge in the present application. Against the order dated 04.07.2019 passed by the learned Magistrate, the petitioner has a remedy under Sections 397 and 401 of the CrPC.

6. In case, a remedy of revision or application under Section 482 of the CrPC is maintainable before this Court for setting aside an order, there would be no question of exercise of power under Article 227 of the Constitution of India.

7. In **Surendra Singh (surpa)** relied upon by the learned counsel for the State, the special Bench in para 17 held as under :-

“17. Accordingly, I am of the view:-

(i) Judicial order passed by the criminal courts are amenable to the jurisdiction of the High Court under Article 227 of the Constitution.

(ii) Where appeals or revision applications or applications under Section 482 of the Code are maintainable before this Court for setting aside such order, there is no question of exercise of power under Article 227.

(iii) Where appeals or revision applications or applications under Section 482 of the Code can not be entertained by this Court in setting aside such orders,



power under Article 227 can be exercised in exceptional cases.

(iv) Where petitioner has already invoked the revisional jurisdiction of the Sessions Judge under Section 397 of the Code and his second revision application to this Court is barred under Section 397(3), it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution since the power of the superintendence is not meant to circumvent the statutory bar.”

8. In view of the discussions made above and the ratio laid down by the special Bench in **Surendra Singh (supra)**, the application is disposed of with liberty to the petitioner to challenge the order impugned by way of filing a revision or an application under Section 482 of the CrPC.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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