

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80489 of 2018

Arising Out of PS. Case No.-133 Year-2018 Thana- KUNDWACHAINPUR District- East
Champaran

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Manoranjana Kumar, Son of Shashishekhara Pratihasta, resident of village-
Hardia, Police Station,-Pupri, District-,Sitamarhi.

... .. Petitioner

Versus

- 1.The State of Bihar
- 2.The Superintendent of Police, East Champaran at Motihari

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr.Dr. Amrendra Kumar, Advocate Mrs. Sanjana, Advocate
For the Opposite Party/s :		Mr.Akhileshwar Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 3 26-02-2021 Let the Superintendent of Police, East Champaran,

Motihari be added as opposite party no. 2. Mr. Akhileshwar

Dayal, learned A.P.P. for the State accepts notice on his behalf.

This application has been filed under the inherent jurisdiction of this Court for quashing and cancelling the order dated 31.10.2018 passed by learned Special Judge, Excise, Motihari in Kundwa Chainpur P.S. Case No. 133 of 2018. By the impugned order the learned Special Judge, Excise, Mothari has rejected the application of the petitioner filed on 22.09.2018 for release of the Bolero vehicle of the petitioner bearing it's registration no. BR-030P-3714, Chassis No. MA1XA2GHKD5B-52835, Engine No. GHD4B67996.



Learned counsel for the petitioner submits that the vehicle in question was seized by Police and a case was registered under the provisions of the Indian Penal Code as also under Section 30(A) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Excise Act, 2016'). The allegations were that the accused persons were using the Bolero vehicle of the petitioner by changing its registration no. BR-30S-4701, though the Chassis number and Engine number were the same.

Learned counsel submits that in fact the Bolero vehicle of the petitioner was earlier stolen away from the house of the petitioner in the night of 13.07.2018 and on the very next day the petitioner has got instituted Pupri P.S. Case No. 357 of 2018 dated 14.07.2018 under Section 379 of the Indian Penal Code against unknown. During investigation of the present case Police came to know about the real owner of the vehicle and then this petitioner came to know about seizure of the vehicle which he found to be his own vehicle and accordingly he had filed a petition on 22.09.2018 for release of the said vehicle.

Learned counsel further submits that since the petitioner was looking for release of his stolen vehicle, he filed an application in the court of learned Special Judge, Excise. A



report was called for from the concerned Police Station. The Investigating Officer reported regarding the ownership of the seized vehicle. The District Transport Officer, Sitamarhi also reported that the registration number BR-305-4701 is registered in the name of Mala Devi, Wife of Arun Rai of Mahua Sitamarhi Sinch Rai, district Sitamarhi. When the chassis and engine number of the vehicle were examined and the report was called for from District Transport Officer, Sitamarhi, he reported that the registration no. BR 30P-3714 is in the name of this petitioner bearing Chassis No. MA1XA2GHKD5B-52835, Engine No. GHD4B67996 which tallied with the seized vehicle.

Learned counsel submits that despite this fact appearing in course of investigation and a clear report from the Investigating Officer and District Transport Officer, Sitamarhi, the learned court below refused to release the vehicle in question. It is his submission that the learned court below has been swayed away because of the imposition of Section 30(A) of the Excise Act, 2016 showing recovery of illicit liquor from the vehicle.

The learned court below, according to learned counsel for the petitioner, did not appreciate that the facts of the case are entirely different and in this case stolen vehicle was being used



for carrying the illicit liquor, therefore, it cannot be said that the owner of the vehicle was in any way instrumental in allowing the vehicle in question to get involved in carrying illicit liquor.

Learned counsel, therefore, submits that it is a case of non application of judicious mind.

Earlier this Court had adjourned the matter calling upon the learned counsel for the State to seek instruction and file a counter affidavit.

Mr. Akhileshwar Dayal, learned A.P.P. for the State submits that although the statement of facts have been received but counter affidavit could not be prepared. A copy of the statement of facts has been produced before this Court which bears the signature of the Superintendent of Police, East Champaran, Motihari.

Perusal of the report shows that the report of the Investigating Officer has been reiterated and in fact the Superintendent of Police, East Champaran, Motihari has submitted that no confiscation proceeding has been initiated till date, petitioner is bonafide owner of the vehicle having valid papers and the order of rejection of the release of the vehicle is bad in law.



This Court finds that the Superintendent of Police, East Champaran, Motihari has supported the case of the petitioner.

Let a copy of the statement of facts be remained on the record.

Having regard to the facts and circumstances of the case, in view of the submission recorded hereinabove, this Court is of the considered opinion that the impugned order is bad in law and suffers from non application of judicious mind. The learned court below could not appreciate that it was a case in which the owner of the vehicle had registered the F.I.R. at the earliest opportunity when the vehicle in question was stolen away and only few days after, the vehicle was found involved in carrying illicit liquor with a wrong registration number plate placed on it.

The Investigating Officer having investigated the matter did not find any fault on the part of the petitioner and hence submitted a report for release of the vehicle. Even today the same view is being reiterated by the Superintendent of Police, East Champaran, Motihari. In such circumstances, when there was no opposition in release of the vehicle in question and there was no initiation of confiscation proceeding against the



vehicle, the learned court below was required to pass an order releasing the vehicle in question but the application of the petitioner in the present case has been rejected. This rejection of the application has delayed the release of the vehicle for over two years and this has certainly caused loss and depreciation in the value of the vehicle.

This Court, therefore sets aside the impugned order 31.10.2018 passed in Kundwa Chainpur P.S. Case No. 133 of 2018 and allows the petition dated 22.09.2018 filed on behalf of the petitioner.

The Superintendent of Police, East Champaran, Motihari is directed to ensure release of the vehicle in question in favour of the petitioner forthwith on production of the papers showing ownership.

This application stands allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

