

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27007 of 2019

Arising Out of PS. Case No.-482 Year-2017 Thana- BETTIAH CITY District- West
Champaran

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DEEPAK KUMAR SHIKARIYA @ Deepak Kumar Son of Late Banwari Lal
Resident of Village - Lal Bazar Bettiah, P.S.- Bettiah Town, Distt.- Bettiah.
... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Shilpi Shikariya @ Silpi Devi Wife of Rajesh Shikariya Resident of Village -
Lal Bazar Bettiah, P.S.- Bettiah Town, Distt.- Bettiah.
... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Surendra Kishore Thakur
For the State	:	Mr.Uday Pratap Singh
For the O.P. No.2	:	Mr. Rakesh Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 05-02-2021 Heard Mr. Surendra Kishore Thakur, the learned

counsel for the petitioner, Mr. Uday Pratap Singh, the learned

APP, and Mr. Rakesh Kumar, the learned counsel for the O.P.

No.2.

The petitioner filed this petition under Section 482 of
the Code of Criminal Procedure for quashing the order dated
22.03.2018 passed by the learned Chief Judicial Magistrate,
Bettiah (West Champaran) in Bettiah Town P.S. case No.
482/2017, corresponding to Complaint Case No. 1833/2017,
registered u/s 448, 387, 380, 427/34 of the IPC by which the
learned Chief Judicial Magistrate dismissed the petition of the
petitioner for release of the seized articles in favour of the
petitioner. The petitioner further seeks quashing of the order



dated 01.09.2018 passed by the learned Sessions Judge, Bettiah in Cr. Rev. No. 64/2018 whereby the learned Sessions Judge affirmed the order of the learned Chief Judicial Magistrate and refused to release the seized articles from the house of the petitioner in favour of the petitioner and ordered for auction of the seized articles.

The learned counsel for the petitioner submits that O.P. No.2 is own cousin of the petitioner and at her instance Bettiah Town P.S. case No. 482/2017 was registered under different Sections of the IPC for theft of articles including the clothes. The police after investigation submitted final form. The final form was accepted but the case proceeded on complaint. The petitioner filed petition under Section 451 of the Code of Criminal Procedure for release of the articles seized from his house during the pendency of trial. The petitioner produced the documents showing that he is owner of the seized articles but the learned Chief Judicial Magistrate refused to release the articles in favour of the petitioner on the ground that the trial is going on and no enquiry is held with regard to the ownership of the seized articles and ordered for auction of the clothes seized from the house of the petitioner. The learned Sessions Judge in revision also confirmed the order of the learned Chief Judicial



Magistrate dated 22.03.2018 passed in Bettiah Town P.S. case No. 482/2017, corresponding to Complaint Case No. 1833/2017. The learned counsel for the petitioner submits that petitioner is ready to deposit the indemnity bond for release of the clothes seized from the house of the petitioner. The clothes were kept in bundles and bags and there is no material to show that the clothes were stolen from the house of informant. The petitioner is still ready to deposit the indemnity bond up to the worth of the clothes for release of the clothes but without considering the facts that unless otherwise is proved with regard to the fact that the petitioner committed theft the petitioner is entitled to have the possession of the articles seized from his house.

The learned counsel for the O.P. No.2 submits that no enquiry is held but at the same time he very fairly submits that clothes were seized from the house of the petitioner.

Having considered the submissions of both sides and on perusal of the orders, I find that admittedly on institution of the FIR at the instance of O.P. No.2 the clothes kept in the bundles and bags were seized from the house of the petitioner. The police after investigation submitted final form finding the accusation of theft untrue and false but the case proceeded on



complaint. I find that u/s Section 451 of the Code of Criminal Procedure the articles seized from the possession of a person can be released in his favour unless the dispute with regard to ownership is resolved on furnishing of indemnity bond up to the worth of the property and, therefore, the learned Chief Judicial Magistrate and the learned Sessions Judge have committed illegality while rejecting the petition of the petitioner for release of the clothes and ordering for auction of the property.

In the result, this petition is allowed. The impugned orders dated 22.03.2018 passed by the learned Chief Judicial Magistrate, Bettiah (West Champaran) in Bettiah Town P.S. case No. 482/2017, corresponding to Complaint Case No. 1833/2017, and the order dated 01.09.2018 passed by the learned Sessions Judge, Bettiah in Cr. Rev. No. 64/2018 are set aside. The seized articles are ordered to be released in favour of the petitioner on his furnishing indemnity bond of Rs. 1,00000/- (rupees one lakh) with an undertaking to produce the cash as and when required by the court.

(Prabhat Kumar Jha, J)

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