

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85733 of 2019

Arising Out of PS. Case No.-48 Year-2019 Thana- GOH District- Aurangabad

SUBHASH KUMAR Son of Late Brijnandan Yadav Resident of Village -
Pratapur, P.S.- Bandeya (Goh), District- Aurangabad (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dhirendra Kumar Son of Rampravesh Yadav Resident of Village - Rupespur
Satabahani, Post - Murera, P.S.- Konch, District- Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Arvind Kumar Singh, Adv
For the State	:	Mr.Bharat Bhushan, APP
For O.P. No.2	:	Mr.Ashok Kumar, Adv
	:	Mr. Jagdish Prasad No.1, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-04-2021

Heard the parties.

2. A brief background, leading to this application under Section 482 Cr.P.C., is that the petitioner is original owner of Temp (PIAGGI APC) bearing Registration No.BR26PA0657, vide copy of certificate of Registration at Annexure-4, copy of Insurance Paper at Annexure-4/A and copy of Pollution Control Check at Annexure-4/B. Opposite party No.2 claims that vehicle by purchase from the petitioner on payment of cost of Rs.1,61,000/-, vide affidavit sworn by the petitioner on 05.12.2018. A copy at Annexure-5. On non-transfer of physical possession of the vehicle by the petitioner to opposite party



No.2, opposite party No.2 lodged Goh P.S.Case No.48 of 2019 against the petitioner under Sections 420 and 406 I.P.C. After investigation, the police submitted chargesheet. The vehicle of the petitioner was seized by the police, during investigation.

3. The petitioner filed a petition for release of the said vehicle before the learned Sub Divisional Judicial Magistrate, Daudnagar where the case was pending on the ground that detention of the vehicle in police custody would not serve any purpose and the petitioner is owner of the vehicle.

4. Opposite party No.2 contested the matter. However, by order dated 08.07.2019, the learned S.D.J.M., Daudnagar ordered for release of the vehicle in favour of the petitioner. A copy of the order is at Annexure-6. The aforesaid order was challenged before the learned Sessions Judge in Cr. Revision No.62 of 2019. The matter was heard by learned Additional Sessions Judge-VIII, Aurangabad and by order dated 26.09.2019 the Revisional Court set aside the order of the learned S.D.J.M., Daudnagar simply by noting that in paragraph-26 of the case diary, there is reference of the affidavit (Annexure-5) of the petition which was not considered by the learned court below. If the order of the Revisional Court is



allowed to stand, the effect would be that the seized vehicle would remain rotting in the police Malkhana.

5. Learned counsel for the petitioner submits that the Revisional Court ignored the mandate of law as well as the fact and has set aside the order of the learned S.D.J.M., Daudnagar causing miscarriage of justice inasmuch as the vehicle is still in the name of the petitioner and the petitioner has stated on oath that produced affidavit (Annexure-5) does not bear signature of the petitioner. Opposite party No.2 has no document of payment of Rs.1,61,000/-to the petitioner.

6. Learned counsel for opposite party No.2 opposed the prayer. However, the record does not reveal that at any point of time, there was claim that consideration money was paid through cheque or bank draft or any other visible mode of transfer. Payment of cash of such a huge amount in business transaction is not permissible under the Income Tax Act.

7. Since the order of the Revisional Court has led to miscarriage of justice, the same is set aside and the order of learned S.D.J.M., Daudnagar is restored. Let the order of learned S.D.J.M., Daudnagar be implemented at once.



However, it is made clear that this order would not prejudice, the claim of opposite party No.2 raised before the appropriate forum, if any.

8. This application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2021
Transmission Date	07.04.2021

