

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.647 of 2021

In
Civil Writ Jurisdiction Case No.19609 of 2019

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Bharosh Mahto Son of Kamal Mahto Resident of Village-Pachtaki Yadu, P.S-Bairganiya, District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The District Magistrate, Sitamarhi, District-Sitamarhi.
3. The Superintendent of Police, Sitamarhi, District-Sitamarhi.
4. The Officer Incharge, Mahindwara Police Station, District-Sitamarhi.
5. Sri Dinesh Ram (Not Known to the Petitioner (M), Son of not Known, the Inspector of Police Mahindwara Police Station, District-Sitamarhi.

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Mahendra Thakur, Advocate
		Mr. Sanjay Kumar. Advocate
For the State	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

9 13-10-2023 The present application has been filed by the applicant/original writ petitioner with a prayer that order dated 16.12.2019, passed by this Court in CWJC No.19609 of 2019 be modified.

2. Heard Mr. Mahendra Thakur, learned counsel for the applicant and Mr. Vikash Kumar, learned SC-11 for the State.

3. It is submitted by learned counsel for the applicant



that the applicant/original writ petitioner had preferred CWJC No.19609 of 2019 before this Court wherein the petitioner had in fact prayed for release of the clothes which has been seized by the Investigating Agency in connection with Mahindwara P.S. Case No.107 of 2019, registered for the offences punishable under Sections 30(a)(b)(c)(f), 38 and 41 of the Bihar Prohibition and Excise Act, 2016. It is submitted that by order dated 16.12.2019, the Court has entertained the said petition and directed the concerned Court to release the seized vehicle provisionally in favour of the petitioner on certain terms and conditions. Now, by way of present application, the applicant has pointed out that in fact the said petition was filed not for release of the vehicle but for release of the clothes which has been seized by the Investigating Agency and, therefore, necessary correction be made in the order dated 16.12.2019.

4. On the other hand, Mr. Vikash Kumar, learned SC-11 has submitted that in fact the petitioner filed the aforesaid petition directly before this Court for release of the clothes and the Court was under the impression that the said petition was filed for release of the vehicle. Even the correct aspects were not brought before the Court and, therefore, this Court under the bona fide belief passed an order for release of the vehicle. In



fact vehicle of the petitioner/applicant has not been seized by the Investigating Agency for which the aforesaid petition was filed. Learned SC-11 for the State, therefore, submitted that applicant be directed to approach before the learned Additional District Judge-II-cum-Special Judge, Excise, Sitamarhi for release of the clothes under Section 451 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') and direct petition before this Court, which was filed, may not be entertained and the aforesaid order may not be modified.

5. We have considered the submissions canvassed by learned counsel for the parties and we have also perused the materials placed on record. It would emerge that on 16.12.2019, this Court passed the order in the aforesaid petition whereby the direction was given to the concerned Court to release the vehicle. However, it appears that there was a bona fide mistake while giving the said direction. It is not in dispute that the petition was filed for release of the clothes and not for release of the vehicle. It is also not in dispute that the said petition was filed directly before this Court without filing any application under Section 451 of the Code before the concerned Court. We are in agreement with the submission canvassed by learned SC-11 that in the facts of the present case, the applicant has to



approach before the Court of learned Additional District Judge-II-cum-Special Judge, Excise, Sitamarhi by filing an application under Section 451 of the Code for release of the clothes.

6. We, therefore, modify the order dated 16.12.2019, passed in CWJC No.19609 of 2019 by observing that it is open for the applicant/original writ petitioner to file an application before the Court of learned Additional District Judge-II-cum-Special Judge, Excise, Sitamarhi for release of the clothes which has been seized by the Investigating Agency pursuant to the aforesaid FIR. As and when such application is filed, the concerned Court shall decide the same as early as possible looking to the fact that the clothes of the petitioner has been seized in the year 2019.

7. With the aforesaid modification in the order dated 16.12.2019, passed in CWJC No.19609 of 2019, this application stands disposed of.

(Vipul M. Pancholi, J.)

(Prabhat Kumar Singh, J.)

Sanjay/-

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