

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.274 of 2020

Arising Out of PS. Case No.-337 Year-2018 Thana- KAHALGAON District- Bhagalpur

LALU MANDAL @ LALU KUMAR MANDAL Son of Bhudev Mandal
Resident of Village - Olapur, P.S.- Pirpainty, Distt.- Bhagalpur.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY, GOVT. OF BIHAR, PATNA Bihar
2. The District Magistrate cum Collector, Bhagalpur, Dist.- Bhagalpur. Bihar
3. The Superintendent of Police, Bhagalpur. Bihar
4. The Dy. S.P. (Headquarter) Cum Investigating officer, Bhagalpur. Bihar
5. The Officer in Charge, Sanhoulla P.S. Dist.- Bhagalpur. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Adv. Mr. P. K. Sinha
For the State	:	Mr. Shahbaj Alam
For Mines Department	:	Mr. Naresh Dikshit Mr. Utsav Anand

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

15 17-08-2023 The present writ application has been filed against the order, dated 26.10.2019, passed, by the learned 5th Additional Sessions Judge, Bhagalpur, in Criminal Misc. No. 99 of 2018, arising out of Kahalgaon Police Station Case No. 337 of 2018, dated 28.05.2018, registered for the offences punishable under Sections 323/409/420 of the Indian Penal Code, Section 40 of the Bihar Minor Minerals Concession Rules, 1972 and Sections 6/8 of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003, whereby the learned 5th Additional Sessions Judge, Bhagalpur has rejected the prayer



of the petitioner for releasing a sum of Rs. 12,23,030/- in his favour on the ground that the same has been illegally earned and is the case property.

2. The brief facts, giving rise to the present writ application, is that on the basis of written report of Manoj Kumar Singh, Sub-Inspector of Police, Station House Officer of Kahalgaon Police Station, Kahalgaon Police Station Case No. 337 of 2018 was registered, stating therein that on 27.05.2018, the informant, on the information from his superior officer that a gang, in which the petitioner is also a member, is operative, who facilitates passing of overloaded vehicles after taking illegal money in the name of police and administration, raided the rented house of the petitioner and recovered, along with other articles and documents, cash amount of Rs. 12,23,030/- (147 notes of Rs. 2000 denomination, 1399 notes Rs. 500 denomination, 1075 notes of Rs. 100 denomination, 1170 notes of Rs. 50 denomination, 280 notes of Rs. 200 denomination. 252 notes of Rs. 20 denomination, 184 notes of Rs. 10 denomination and 1417 coins of Rs. 5, 31 coins of Rs. 1 and 175 coins of Rs. 2) from the petitioner. Accordingly, seizure list was also prepared, which is Annexure B to this writ application.

3. Learned Senior Counsel for the petitioner submits



that the cash amount recovered from the possession of the petitioner is his own money and the same was not illegally earned. The seized money was kept for payment of the loan amount to the bank and for other expenses. The petitioner is income tax payee and whether the petitioner has earned the seized amount by illegal means or not shall be dependent upon the final outcome of the case. There is no provision of confiscation of property under the Indian Penal Code or the Bihar Minor Minerals Concession Rules, 1972, under which the First Information Report against the petitioner has been lodged. The petitioner undertakes that he shall produce the similar amount as and when ordered by the learned District Court. He further submits that the petitioner has been granted bail in connection with Kahalgaon Police Station Case No. 337 of 2018. He further submits that the cash amount has been kept in the Malkhana of the Police Station and before the learned District Court, the police has submitted a report in which it has been stated that the police has no objection, if the seized money is released in favour of the petitioner.

4. Learned Senior Counsel, assailing the order of learned 5th Additional Sessions Judge, Bhagalpur, submits that the learned 5th Additional Sessions Judge, Bhagalpur, has failed



to appreciate the legal provisions enshrined under Section 451 and 457 of the Code of Criminal Procedure, 1973, and the law laid down by the Supreme Court, in the case of **Sunderbhai Ambalal Desai v. State of Gujarat**, reported in (2002)10 SCC 283.

5. On the other hand, learned Counsel for the respondents opposed the prayer of the petitioner for release of the cash amount in his favour during the pendency of the trial on the ground that the recovered cash amount was illegally earned amount and is a matter of further investigation regarding the source of earning.

6. I have heard learned Counsel for the parties concerned and have also gone through the materials available on record, including the impugned order.

7. Section 451 and 457 of the Criminal Procedure Code deals with the power of the court to order for custody and disposal of the property pending trial in certain cases and the procedure by police upon seizure of property.

8. From perusal of the aforesaid provisions, it would appear that the Court is empowered to pass an appropriate order with regard to such property. The object and scheme of the various provisions of the Code of Criminal Procedure, 1973,



dealing with seizure of property by the police has been dealt with by the Supreme Court, in the case of **Sunderbhai Ambalal Desari v. State of Gujarat reported in (2002) 10 SCC 283** in paragraphs- 5 and 7, wherein it has been observed as follows:-

“5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise dispose of, after recording such evidence as it thinks necessary;

(3) If the property is subject to speedy and natural decay to dispose of the same.

7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of it remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper *panchnama* before handing over possession of article is prepared, that can be used in evidence



instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

9. The Supreme Court, in another judgment reported in the case of **Smt. Basavva Kom Dyamangouda Patil v. State of Mysore and Another**, reported in **1977 (4) SCC 358**, while dealing with the seizure of property by the police and the object and scheme of the various provisions of the Code of Criminal Procedure, 1973, has observed, in paragraph 4, as follows:-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary, As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may



be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

10. In view of the aforesaid discussion of law as well as the facts involved in the matter, I am of the considered



opinion that the learned 5th Additional Sessions Judge, Bhagalpur, has failed to exercise his jurisdiction in correct legal perspective and thereby committed material irregularity inasmuch as it is not disputed that the cash amount has been seized from the petitioner and the same is lying in the Malkhana of the Police Station. The petitioner has given an undertaking that he shall produce similar amount as and when ordered by the Court.

12. Accordingly, the order, dated 26.10.2019, passed, by the learned 5th Additional Sessions Judge, Bhagalpur, in Criminal Misc. No. 99 of 2018, arising out of Kahalgaon Police Station Case No. 337 of 2018, is set aside and the learned Chief Judicial Magistrate, Bhagalpur, is directed to release the currency notes, in question, in favour of the petitioner, after calculating the amount from the seizure list of the case, within a period of three weeks from the date of receipt/production of a copy of this order, subject to the following conditions:-

(i) That the petitioner shall furnish adequate security of Rs. 12,30,000/- to the satisfaction of the learned District Court.

(ii) That before handing over the currency notes to the



petitioner, a detailed and proper *panchnama* of the said currency notes after taking its photograph shall be prepared.

(iii) That the petitioner shall also execute bond that the equivalent value of currency notes shall be produced as and when required by the Court.

13. In the result, this writ application is allowed with the aforesaid observations and directions.

(Anil Kumar Sinha, J.)

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