

Angesh Singh Alias Angesh Kumar Singh Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Aug-06-2015

Appellant : Angesh Singh Alias Angesh Kumar Singh

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 772 of 2015 Angesh Singh @ Angesh Kumar Singh, Son of Kamakhya Singh, resident of Chattar Mandu, PO- Chattar Mandu, P.S. & District- Ramgarh . Petitioner(s) -V e r s u s- State of Jharkhand Opposite Party CORAM: - HONBLE MR. JUSTICE RAVI NATH VERMA For the Petitioner(s) : - Mr. Prabhat Kumar Sinha, Advocate For the State : - Ms. Vandana Bharti, A.P.P. C.A.V. ON- 15/07/2015 PRONOUNCED ON-06/08/2015 Challenge in this revision application is to the order dated 15.05.2015 passed by learned Judicial Magistrate, 1st Class, Hazaribagh in Gola P.S. Case no. 21 of 2015, corresponding to G.R. Case no. 786 of 2015, whereby and whereunder, the application filed by the petitioner for release of his Truck bearing registration no. JH-02C-8704 has been rejected.

2. The prosecution case, in nutshell, is that on 22.02.2015, the informant after receiving confidential information intercepted one TATA truck 407 bearing no. JH-02C-8704 loaded with illegal coal, which is alleged to have been excavated from the forest area. On search, the truck was found to be loaded with about five ton steam coal and on the basis of which, F.I.R. was lodged under Sections 414 of the Indian Penal Code, Section 30(ii) of Coal Mines Act and also under Section 33 of

the Indian Forest Act.

3. Learned counsel appearing for the petitioner submitted that petitioner being the owner of the Truck bearing registration no. JH-02C- 8704 filed an application in the court concerned for its release as it was a commercial vehicle but his prayer has been rejected by the court below holding that since the confiscation proceeding has been initiated, the vehicles in question cannot be released. This order was passed on the basis of a report received from Authorised Officer-cum- Divisional Forest Officer, Ramgarh Forest Division wherein it was informed that confiscation proceeding has been initiated. It was also submitted that prior to this, the petitioner had no knowledge of initiation of any confiscation proceeding. It was also submitted that the vehicle in question being a commercial vehicle is lying in open space and there is every apprehension that due to 2 weathering effect, the vehicle by efflux of time will be converted into garbage. Hence, prayer is to release the vehicle.

4. Learned A.P.P. for the State vehemently opposed the prayer and submitted that the order passed by the court below needs no interference as the confiscation proceeding of the vehicle and the seized material has been initiated.

5. This Court at present is not going into the merit of the allegation levelled in the F.I.R. The truck in question stands seized since 22.02.2015. It is common knowledge that vehicles are vulnerable to vagaries of nature in case they are kept in open space without adequate care.

6. In a case *Sunderbhai Ambala Desai Versus State of Gujarat* [(2002) 10 S.C.C. Page 283], the Honble Supreme Court has held that commercial vehicles seized in respect of offence shall not be kept in custody for a very long period. The vehicle owner, in case, approaches for release of the same prompt action should be taken after preparing necessary Panchnama in case is required, steps shall be taken for identification and also for recording evidence and adopt other appropriate measures, so that in the event the property is subjected to natural decay the evidence is available during proceedings. In paragraph 17, the Honble Supreme Court further held as follows: In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police station for a long period. It is for the

Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

7. The Honble Supreme Court in the aforesaid case has given direction to release the vehicle after taking proper and sufficient bank guarantee but considering the fact that confiscation proceeding has been initiated, in such a situation, the petitioner is directed to appear before the confiscation authority and file his show-cause and a petition for release of the vehicle as there is provision in the Forest Act to release the vehicle even during pendency of the proceeding and the Authority considering the fact that the vehicle in question is a commercial vehicle, no purpose would be served by keeping the vehicle in open space of the police station for a very long period or till the conclusion of the confiscation proceeding and the vehicles are vulnerable to vagaries of nature and due to weathering effect, there will be a natural decay, will take appropriate steps for release of the vehicle in favour of the petitioner after taking security including bank guarantee equal to the present value of the vehicle in question and the court/confiscation authority shall also take steps to make a Panchnama and photograph of the vehicle, which shall be kept on record for further use during proceedings, so that the trial/proceeding may not be hampered. The owner of the vehicle would also give an undertaking that he would not dispose of the vehicle or alienate in any way during pendency of the case in court below as well as in confiscation case and would produce the vehicle as and when required. If the petitioner violates any of the term of undertaking given by him and fails to produce the vehicle before the court or before the confiscation authority, the court/authority shall be at liberty to forfeit the bank guarantee filed earlier. The release of the vehicle will be subject to appearance of the petitioner and filing show cause in confiscation case.

8. With the aforesaid observation, this revision application is, hereby, allowed. The impugned order dated 15.05.2015 passed by learned Judicial Magistrate, 1st Class, Hazaribagh in Gola P.S. Case no. 21 of 2015, is, hereby, set aside. This order of release of vehicle will be subject to the final decision of the confiscation case. (R. N. Verma, J.) Jharkhand High Court, Ranchi Dated, 6th August, 2015

Ritesh/N.A.F.R.

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