

Deepak Kumar Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Sep-17-2015

Appellant : Deepak Kumar

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(Cr.) No. 317 of 2014
Deepak Kumar Son of Shambhu Saran Prasad, resident of village- Ram Nagar Colony, Chas, PO &PS - Chas, District- Bokaro . Petitioner(s) -V e r s u s- 1. State of Jharkhand 2. Divisional Forest Officer, Forest Division, Ramgarh, Dist.- Ramgarh Respondents CORAM: - HONBLE MR. JUSTICE RAVI NATH VERMA For the Petitioner(s) : - Mr. Shekhar Prasad Sinha, Advocate For the State : - Mr. Pran Pranay, J.C. to SC II C.A.V. ON- 13/07/2015 PRONOUNCED ON-17/09/2015 Invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has prayed for a direction to Divisional Forest Officer, Forest Division, Ramgarh- respondent no.2 to release his truck bearing registration no. JH-10V-8551 seized in connection with Confiscation Case No. 51 of 2013 arising out of Gola P.S. Case No. 08 of 2013 for the alleged offence under Section 414 of I.P.C. and also under Section 30(ii) of Coal Mines Act and Section 33 of the Indian Forest Act .

2. The prosecution case, in brief, is that on some confidential information, the A.S.I. Prakash Toppo along with other police personnel came near Mahto Line Hotel, Jhanjharitand under Gola Police Station and seized the truck and

apprehended the driver, who on enquiry disclosed his name as Vikash Kumar and also disclosed that the Khalasi of the truck has fled away with the documents of the coal after seeing the police party. It is also alleged that the driver of the truck and owner after excavating the illegal coal from the forest area had collected 20 tons of steam coal, which was found loaded on the seized truck. It appears from the record that immediately after the seizure of the truck, the Confiscation Case No. 51 of 2013 was initiated at the instance of the respondent no.2, the Divisional Forest Officer, Ramgarh and the same is still pending.

3. Learned counsel appearing for the petitioner seriously contended that the petitioner had purchased the seized truck after taking loan from the bank and due to seizure of the truck, he has been facing a great financial loss and mental agony though no case under Section 414 of I.P.C. or under any provision of Coal Mines Act or Indian Forest Act is made out against this petitioner. It was also submitted that coal in question was loaded on his truck after its release by Jharkhand State Mineral 2 Development Corporation Ltd. from Piperwar Colliery of Central Coalfields Limited on 09.02.2013 and that since after its seizure, the truck in question is lying in the campus of the police station in open field and there is every chance that due to weathering effect, the vehicle will be converted into garbage. Hence, his prayer is to release the vehicle.

4. Refuting the above submissions, learned counsel representing the State seriously contended that a petition filed by the petitioner before the Confiscation Authority for release of the vehicle is still pending and the said authority has every jurisdiction to release or not to release the vehicle during pendency of the proceeding. It was also submitted that even if it be considered that Confiscation Authority refused to release the vehicle, there is a provision of filing appeal under Section 52(A) of the Indian Forest Act before the proper authority but without waiting for any order to be passed by respondent no.2, this writ petition has been filed by the petitioner, which is not maintainable in the eye of law.

5. Having heard the counsels and after going through paragraph- 7 of the counter affidavit filed by the State, I find that the petition filed by the petitioner for release of the vehicle before respondent no.2 is still pending and no order has been

passed on that petition. The petitioner without waiting for any decision on that petition has preferred this criminal writ petition invoking the extra-ordinary jurisdiction of this court under Article 226 of the Constitution of India. It is no doubt that the proceeding was initiated in the year 2013 and even after almost two years, no order has been passed by the Confiscation Authority i.e. respondent no.2 on the petition filed for release of the vehicle.

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 and steps shall also 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:

3. 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. From bare perusal of the ratio decided in the above case, it is amply clear that the Honble Supreme Court has given direction to every concerned court to release the vehicle after taking proper and sufficient bank guarantee as 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. The vehicles are vulnerable to vagaries of nature and due to weathering effect, there will be a natural decay. However, the vehicle cannot be released without taking proper steps for making a Panchnama and photographs of the vehicle, which can be used during proceedings of the court.

8. In that view of the matter, the respondent no.2, the Divisional Forest Officer, Forest Division, Ramgarh is, hereby, directed to pass an appropriate order on the

petition filed by the petitioner for release of the vehicle under confiscation case bearing no. JH-10V-8551 at the earliest preferably within two months from the date of production of copy of this order.

9. With the above observation, this Writ Petition (Cr.) is, hereby, disposed of. (R. N. Verma, J.) Jharkhand High Court, Ranchi Dated, 17th September, 2015 Ritesh/N.A.F.R.

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