

indradeo Singh Vs. the State of Bihar

indradeo Singh Vs. the State of Bihar

SooperKanoon Citation : sooperkanoon.com/975534

Court : Patna

Decided On : May-25-2012

Appellant : indradeo Singh

Respondent : The State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Miscellaneous No.2415 of 2010 Indradeo Singh, son of Late Dwarika Singh, resident of Village-Khanpur, P.S.-Didarganj, District-Patna, Manager Dhillon Transport Agency, Pethiya gachhi, District-Samastipur. .PETITIONER. Versus The State of Bihar
OPPOSITE PARTY.

=====

Appearance : For the petitioner : Mr. Ram Naresh Roy, Advocate. Mr. Yogendra Kumar, Advocate. For the State : Mr. Nand Kishore Prasad, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI ORAL
ORDER (Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

25. 01/2012 Petitioner has prayed for quashing of order dated 12.01.2009 passed by learned Chief Judicial Magistrate in Samastipur Town (M) P.S. Case No.136 of 2004, G.R. No.411 of 2004 whereby and whereunder petitioner along with others has been summoned to face trial for an offence punishable under Section 414, 120(B), 34 of the I.P.C. A.S.I., Rajeshwar Prasad Mishra, Officer-in-charge of Town P.S. recorded his own fardbeyan disclosing therein that on 24.03.2004 he

had received confidential information with regard to transportation of objectionable material over Truck No. UP 13-A-5477. Accordingly, he intercepted the truck and during said course driver had tried to get rid of. However, he was apprehended and on query disclosed his name as Chhatrpal and further disclosed that truck belongs to Dhillon Transport and he was carrying the same to its Samastipur depot. He had furnished document relating to the Patna High Court Cr.Misc. No.2415 of 2010 (5) dt.25-01-2012 2 other articles, but so far Shikhar Gutkha which was kept in 21 bags, no document was produced nay he disclosed any identity thereof. Further he disclosed that Shikhar Gutkha has been banned within the Bihar State from 01-04-2003 to 31-03-2008 as per Health Department Notification No. 357(15) dated 31-03-2003. On the basis of the aforesaid written report, Town P.S. Case no.136 of 2004 was registered against the driver as well as proprietor of Dhillon Transport, Transport Agency, but during course of investigation as the petitioner claiming himself to be manager of Samastipur Depot had applied for release of the article so seized and in the aforesaid background also stood arrayed as an accused, against whom, after concluding investigation charge sheet was submitted where upon vide order impugned cognizance has been taken and petitioner along with Chhatrpal has been summoned to face trial, hence arose a cause for filing instant petition. Contention on behalf of the petitioner is that petitioner has fallen victim of careless and improper investigation conducted by the I.O. of the case as the status of the petitioner happens to be of Manager at Samastipur Depot without having any concern with the consignment. Further submitted, from the relevant receipt (Annexure-2) it is evident that the aforesaid goods were being carried to its destination at Gauhati. As the truck was also carrying articles to be Patna High Court Cr.Misc. No.2415 of 2010 (5) dt.25-01-2012 3 unloaded at Samastipur, therefore there was breakage of transportation at Samastipur. To support the same, has filed Annexure-2 Series. Also submitted that being a Depot Manager he cannot be held responsible for any goods being transported to Samastipur at the instance of an individual. Also submitted that petitioner, instead of arraying as an accused, should have been shown as a witness. Also submitted that even taking into account the prosecution version, no offence is made out as the goods were to be transported and unloaded at Gauhati. Also submitted that transportation of Gutkha was not prohibited within the

jurisdiction of Assam State and as such, submitted that no offence whatsoever is made out. At the other hand, the learned A.P.P. opposed the prayer and submitted that during course of investigation petitioner should have submitted relevant document before the Investigating Authority to show that the goods was to be transported to Gauhati. Also submitted that for the present purpose whatever material has been collected during course of investigation justify the order impugned. Heard the parties as well as gone through the order impugned. The case diary is also available. After going through the case diary it is evident that petitioner has failed to produce the relevant document (Annexure-2) during course of investigation. If it would have been filed during said course Patna High Court Cr.Misc. No.2415 of 2010 (5) dt.25-01-2012 4 then would have enabled the investigating authority to see its veracity and genuineness. Moreover, at the stage of taking of cognizance only prima facie material has to be seen without adverting to the document if any relied upon by the accused. even in worst case accepting the same, Annexure-2 is not going to help the petitioner as the owner of Gutka has not turned up to claim the same nor the document is going to favour the petitioner as it does not command the event within Bihar State. At this stage, since *Abhinandan Jha & Ors. Versus Dinesh Mishra Case* (AIR 196.SC

170) it has been held that it is within the exclusive domain of the Magistrate to accede with the finding or differ from the finding of the investigating officers. However, for the purpose of taking of cognizance, only prima facie material has to be seen without weighing whether those materials ultimately result in conviction. As such, I do not see any illegality in the order impugned. Consequent thereupon, the petition is dismissed. However it will be opened to the petitioner to raise his grievance, if any, so advised at the proper stage of the trial. (Aditya Kumar Trivedi, J.) PN

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com