

(2019) 07 PAT CK 0263

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13946 Of 2016

Digvijay Kumar Singh

APPELLANT

Vs

State Of Bihar, Through The Secretary And Ors

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Citation : (2019) 07 PAT CK 0263

Hon'ble Judges : Sanjay Priya, J

Bench : Single Bench

Advocate : Uma Shankar Singh, Dhurjati Kr. Prasad

Final Decision : Disposed Of

Judgement

Heard the learned counsel for the petitioner and the State.

The instant writ petition is directed for the following reliefs:

(i) For issuance of an appropriate writ to quash the order dated 28.08.2014 passed by the Divisional Forest Officer- cum-Authorized Officer, Rohtas at Sasaram (Respondent No. 4) in Confiscation Case No. 22/2014 (contained in Annexure- 2).

(ii) For issuance of an appropriate writ to quash the order dated 31.03.2015 passed by the District Magistrate, Rohtas (Respondent No. 3) in Forest Confiscation Appeal No. 52/2014 (contained in Annexure-3).

(iii) For issuance of an appropriate writ to quash the order dated 11.12.2015 in Forest Revision Case No. 13 of 2015 passed by the Secretary, Forest and Environment Department, Govt. of Bihar (Respondent No. 2) (Contained in Annexure-4).

(iv) For issuance of an appropriate writ/order/direction, directing the Respondent authorities or Respondent No. 4 to release provisionally the seized vehicle bearing Registration No. BR 24G 2428 in connection with Forest Case No. 12 of

2014 confiscated in Confiscation Case No. 22/2014 during pendency of the present writ petition or till the final disposal of Forest Case No. 12 of 2014, pending in the Court of C.J.M., Rohtas, Sasaram.

The brief fact of the case is that petitioner is owner of the vehicle having Registration No. BR 24G 2428. Aforesaid vehicle of petitioner has been subjected to Forest Case No. 12 of 2014 and has been seized alleging that the same has been found in Forest Area on 22.03.2014. A Complaint Case to this effect along with seizure has been filed in the Court of C.J.M., Rohtas, Sasaram. Confiscation Case No. 22 of 2014 was also started before Respondent No. 3 with respect to seized vehicle in Forest Case No. 12 of 2014. The petitioner appeared before the Respondent No. 3 on 05.04.2014 and filed show cause along with valid papers of ownership and also prayed for provisional release of his vehicle. Claim of petitioner in confiscation proceeding was finally disposed off on 28.08.2014 against the petitioner by Respondent No. 4 and his vehicle was confiscated. Thereafter petitioner moved in appeal before Respondent No. 3 aggrieved by the order of Respondent No. 4 dated 28.08.2014 by way of Forest Appeal No. 52 of 2014, which was dismissed by order dated 31.03.2015. The petitioner filed Revision Case No. 13/2015 before the Secretary Forest Department (Respondent No. 2), which was rejected on 11.12.2015. The vehicle of petitioner is lying in open sky and is getting damaged.

Learned counsel for the State has submitted that vehicle of petitioner has been seized from the Forest Area.

Learned counsel for the petitioner has submitted that petitioner was holding valid challan of the stone chips loaded on his vehicle. It is further submitted that in the appellate order it is mentioned that appellant (petitioner herein) has stated in his evidence that driver was holding valid challan. Challan was given to the Confiscating Officer, but he did not return the same. Witness no. 1, Sri Kant Prasad (Driver of the vehicle), has also stated same fact in his evidence. The appellant (petitioner herein) had produced photocopy of the challan in support of his claim.

In this manner, from the order of the Appellate Authority, it appears that challan was produced before the Confiscating Officer by the driver of the vehicle but the same was not returned to him. The appellant (petitioner herein) had produced photocopy of the challan in support of his claim, but the same was not believed by the Confiscating Officer.

By order dated 10.05.2019, learned counsel for the State was directed to seek instruction with regard to genuineness of the challan produced by the petitioner at the time of confiscation of the vehicle and whether the fact with regard to genuineness of challan was enquired before disbelieving the same and file Counter Affidavit. The State was given sufficient time to file Counter Affidavit but no Counter Affidavit has been filed.

Learned counsel for the petitioner has submitted that production of challan

before the Confiscating Officer will be only ascertained from the Department. The department has not given any valid reason.

This Court after looking into impugned orders passed by Respondent Nos. 2, 3 and 4 finds that all the orders have been passed without proper consideration of submission of petitioner that driver was holding valid challan for stone chips. The challan was produced before the Confiscating Officer, but only on surmises that challan was not valid, vehicle of petitioner was seized. The respondents have not given any valid explanation as how the challan was not valid.

Therefore, the orders dated 28.08.2014, 31.03.2015 and 11.12.2015 as contained in Annexures- 2, 3 and 4 are not in accordance with law. They are accordingly set aside.

This writ petition is accordingly allowed.

Respondent no. 4 is directed to release the vehicle of petitioner within two weeks from the date of receipt/production of copy of this order after proper verification of all the relevant documents produced by the petitioner with regard to ownership and registration of vehicle in favour of petitioner.

The petitioner will file affidavit before the authority that he will produce the vehicle as and when required in Forest Case No. 12/2014 and shall not dispose off the same during pendency of aforesaid criminal case.