
(2007) 11 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No. 18843 of 2007

Mosomat Ram Sakhi Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-11-2007

Acts Referred:

Citation : (2008) 1 PLJR 254

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Binod Prasad Singh, for the Appellant; Subhash Prasad Singh and Indeshwari Prasad Mandal, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—This application is directed against the order dated 15.6.2001 passed by the learned Sessions Judge, Nalanda at Biharsharif in Criminal Revision No. 274 of 2000 preferred against the order dated 20.4.2000 passed by Sri Ajeet Kumar Sinha, learned Judicial Magistrate, Biharsharif in G.R. Case No. 2302 of 1999 arising out Bihar P.S. Case No. 444 of 1999 whereby he has rejected the prayer of the petitioner to release the seized articles seized in connection with the aforesaid case in her favour. It appears that a theft was committed in the house of the informant one Jai Prakash, Sub-Inspector of Police at Biharsharif in between 12.11.1999 and 16.11.1999 and ornaments and other articles including cash of Rs. 25,000/- was stolen. It had been alleged that during investigation some ornaments and cash worth Rs. 62,000/- were seized from the house of the petitioner, Ram Sakhi Devi on the basis of the confessional statement of one Vijay Kumar Sinha, an accused in the case, who disclosed that the stolen articles of the present case were kept by co-accused, Anil Ram in the house of the petitioner who was related with Anil Ram. It also appears that after investigation charge-sheet had been submitted against accused Vijay Kumar Sinha and others who were put on trial whereas investigation was pending against some others.

2. It has been submitted on behalf of the petitioner that the seized articles belonged to her and she is entitled to possess the same. It has also been submitted that there was no material on record to show that the seized articles were in fact stolen articles of the present case. It was further sought to be submitted that when the petitioner had a list of articles belonging to her alongwith her petition, the learned Magistrate committed an error in rejecting her petition for release of the said articles in her favour. It was also submitted that when the petitioner was neither an accused nor a witness in the case and had no concern with the alleged occurrence of the instant case, there was no occasion for the learned Magistrate to refuse the release of the articles belonging to her in her favour. The learned counsel also sought to point out that when the learned Chief Judicial Magistrate on hearing the petition for releasing the articles in favour of the petitioner had directed the petitioner to submit papers in support of her contention she could not file the same as the papers were not available with her. It was submitted that now the petitioner was in possession of Letter No. 877 dated 24.12.1999 issued by the Medical Officer, Referral Hospital, Rajgir from which it would transpire that from 20.7.1998 to 12.11.1999 the petitioner had received a total sum of Rs. 92,143/- as retrial benefits and out of the said amount she had bought some house materials for Rs. 12,143/- and the remaining amount had been kept in the house for use.

3. It will appear from the impugned order of the learned Chief Judicial Magistrate that since it had come in the confessional statement of accused Anil Ram, a co-accused of the case that he lived in the house of the petitioner, Ram Sakhi Devi and used to keep the articles of loot in the house of the petitioner and the petitioner had not produced any paper or any document to show her bona fides regarding the articles and cash seized by the Police it would not be proper to release the articles.

4. From perusal of the impugned order passed in the Revision Application, it appears that the learned Sessions Judge had not found any illegality or impropriety in the impugned order but notwithstanding the same he had given liberty to the petitioner to renew her prayer for release of the seized articles after the evidence of the informant is concluded in the trial and the learned court below in that event would consider the prayer.

5. There are two aspects of the matter. Firstly, when the petition for release of the articles in favour of the petitioner was moved she did not have any paper or document to substantiate her claim and that too when the recovery of looted articles of theft had been made from her house on the confessional statement of co-accused, Anil Ram, who also happens to be the relative of the petitioner and lived with her. That apart the learned Sessions Judge in the revisional order had already directed the learned C.J.M. to rehear the petitioner and then pass order in accordance with law. This does not appear to have been availed of by the petitioner although in the instant application she claims that she now has in her possession the letter issued by the Medical Officer, Referral Hospital, Rajgir,

regarding her retrial benefits.

6. In the facts and circumstances of the case, and the directions issued by the learned Sessions Judge in the Revision Application as also the petitioner being in possession of the relevant documents to prove her bona fides it would only have been fit and proper for her to have moved the learned C.J.M. afresh. I do not find any merit in the application which is dismissed. The petitioner is directed to move the learned C.J.M., Nalanda at Bihar Sharif afresh for release of the seized articles in the light of the order passed in the Revision Application preferred by her.