

(2012) 03 PAT CK 0094

In the Patna High Court

Case No : Criminal Miscellaneous No. 1402 of 2012

M/s Spicy Beverage Pvt. Ltd. and Another

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2012) 3 PLJR 504

Hon'ble Judges : Hemant Kr. Srivastava, J

Bench : Single Bench

Advocate : Satyabir Bharti, for the Appellant; Madan Kumar, for the State, for the Respondent

Judgement

Hemant Kr. Srivastava, J.—Heard Learned Counsel for the petitioners as well as learned Additional Public Prosecutor for the State and in my view, this petition can be disposed of on admission stage itself. The petitioners have filed this petition u/s 482 of the Cr. P.C. for quashing the order dated 30.11.2011 passed by Sri Deepanshu Srivastava, Judicial Magistrate, 1st Class, Muzaffarpur in (Excise) CII-Case No. 4 of 2010 corresponding to Trial No. 4170 of 2011 by which and whereunder he refused to release 12,000 BL of rectified spirit and tanker bearing Registration No. BR/22-5741 in favour of the petitioners on the ground that the aforesaid seized items are exhibits and could affect the trial of the case.

2. It is contended by Learned Counsel for the petitioners that petitioner No. 2 is owner of the aforesaid tanker whereas petitioner No. 1 is licensee holder for manufacture of country made liquor in the District of Nalanda and as a matter of fact, the aforesaid tanker had gone to take rectified spirit from distillery situated at Riga, District-Sitamarhi and while the aforesaid rectified spirit was being carried by the aforesaid tanker, the tanker got stranded at Muzaffapur due to mechanical defect but in the meantime, the officials of the Excise Department seized the aforesaid tanker as well as rectified spirit on the premises that pass

and other documents had earlier been used by the petitioners for carrying the rectified sprit from Sitamarhi to Nalanda.

3. It is further contended by Learned Counsel for the petitioners that petitioner No. 2 and one co-accused filed Cr. Misc. No. 42521 of 2010 before this Court for grant of anticipatory bail and while considering the aforesaid criminal miscellaneous case, this Court directed the learned trial court to verify the allegation from discharge and receipt registers and after the aforesaid order of this Court, the learned Magistrate called for both the registers and found that the allegation of use of documents twice was incorrect.

4. It is further contended by Learned Counsel for the petitioners that all the necessary documents were placed before the learned court below for release of the tanker as well as seized sprit but the learned trial court rejected the petition on flimsy ground.

5. Learned Additional Public Prosecutor appearing for the State submits that it is not clear from the impugned order as well as record as to whether any confiscation proceeding has been initiated in respect of the seized items or not. So a report may be called for from the trial court as to whether any confiscation proceeding has been initiated or not.

6. Having heard the contentions of both the parties, I have gone through the record. I find from Annexure-12 to this petition that the learned Judicial Magistrate has clearly observed in his order dated 9.9.2011 that after perusal of the registers in question the accusation against the petitioners is baseless. Moreover, it is not in dispute that the petitioner No. 2 is not the owner of the seized tanker and petitioner No. 1 is not the owner of the seized rectified sprit.

7. Although, learned Judicial Magistrate has observed in the Impugned order that the release of the tanker and sprit could affect the trial of the accused persons of the above stated case but I am unable to understand as to how the trial of the accused would be affected, if the seized articles are released in favour of the petitioners because the seizure of the aforesaid articles can easily be proved by proving the seizure list itself.

8. So far as confiscation proceeding is concerned, the factum of the same has not even whispered by the learned Magistrate in his impugned order. However, the learned Magistrate is fully empowered to pass an order for initiation of confiscation proceeding in course of trial of the aforesaid case.

9. In the aforesaid circumstance, the above stated seized tanker bearing Registration No. BR/22-5741 as well as seized 12,000 BL of rectified sprit are directed to be released in favour of the petitioner No. 2 and petitioner No. 1, respectively after taking the indemnity bond for which the amount shall be fixed by the learned court below itself subject to condition that petitioner No. 2 shall produce the aforesaid tanker whenever and wherever it is required by the learned trial court and shall not transfer the aforesaid tanker without taking prior

permission of the learned trial court till the conclusion of trial of the above stated case.

10. In view of the aforesaid discussions, this petition stands disposed of on admission stage itself. Let this order be communicated to the Court of Sri Deepanshu Srivastava, Judicial Magistrate, 1st Class, Muzaffarpur in (Excise) CII-Case No. 4 of 2010 corresponding to Trial No. 4170 of 2011 through FAX at the cost of the petitioners.