

(2020) 01 PAT CK 0336

In the Patna High Court

Case No : Miscellaneous Jurisdiction Case No. 3174 Of 2018, Letters Patent
Appeal No. 370 Of 2017

Nagendra Choudhary @ Nagendra Chaudhari

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 01 PAT CK 0336

Hon'ble Judges : Ashwani Kumar Singh, J; Partha Sarthy, J

Bench : Division Bench

Advocate : Sanjay Kumar Tiwary, Tej Pratap Singh

Final Decision : Dismissed

Judgement

1. The instant application has been filed by the petitioner for initiating contempt proceeding against the opposite parties for their wilful disobedience and deliberate disregard to the order dated 02.03.2017 passed in L.P.A. No. 370 of 2017 by which a direction was given by this Court for release of vehicle bearing registration No. BR-24G-7387.

2. It is submitted by the learned counsel for the petitioner that in pursuance of the direction of this Court, the petitioner approached the opposite party No. 2 on 20.03.2017 along with the order dated 02.03.2017 for its compliance. However, the opposite party No. 2 declined to release the vehicle of the petitioner and in utter disregard to the order passed by this Court dismissed Forest Appeal No. 45 of 2015 vide order dated 13.02.2018 and upheld the order of the confiscating authority.

3. Learned counsel for the opposite parties has drawn our attention towards the written show cause filed on behalf of the opposite party no.2 wherein a stand has been taken that there is no deliberate disobedience of the order of this court.

4. We have heard the parties and perused the materials on record.

5. The vehicle of the petitioner was seized for committing an offence under the Forest Act and a confiscation proceeding had been initiated by the Divisional Forest Officer-cum-Authorized Officer, Rohtas Forest Division, Rohtas at Sasaram. The Authorized Officer vide order dated 29.09.2015 passed in Confiscation Case No. 153 of 2015 confiscated the vehicle in question.

6. The petitioner preferred Forest Appeal No. 45 of 2015 along with the release petition before the opposite party No. 2, the District Magistrate, Rohtas at Sasaram.

7. During pendency of the appeal, the petitioner filed a writ petition before this court vide C.W.J.C No. 15442 of 2016. The learned single Judge vide order dated 23.12.2016 disposed of the writ petition observing as under:-

"Having heard learned counsel for the parties and taking into consideration the limited prayer made by the petitioner, this writ petition is disposed of with the direction to the District Magistrate, Rohtas at Sasaram cum Appellate Authority under the Indian Forest Act, 1927 to consider and dispose of the appeal of the petitioner in accordance with law and after giving opportunity of hearing to the contesting parties, expeditiously and preferably within three months from the date of receipt/production of a copy of the order. In case of any reason the appeal is not disposed of within the period stipulated hereinabove, the Appellate Authority would consider the prayer of the petitioner for provisional release of his vehicle in question and dispose of the same within one month thereafter in accordance with law."

8. Being aggrieved by the order passed by the learned single Judge, the petitioner preferred Letters Patent Appeal No. 370 of 2017 before the Division Bench. After hearing the parties, the Division Bench passed an interim order dated 02.03.2017 observing as under:-

"In the meanwhile, we order that the vehicle in question (BR24G/7387) be released provisionally to the satisfaction of the Collector, Rohtas at Sasaram-cum-Appellate Authority, on fulfillment of the following conditions:-

(i) The appellants shall furnish all the necessary papers/documents of ownership and security bonds (which will not include Bank Guarantee) as may be deemed fit and proper by the Collector, Rohtas at Sasaram-cum-Appellate Authority.

(ii) The appellants shall undertake, in writing, that the vehicle, in question, shall neither be alienated nor be transferred in favour of any third party during the pendency of the confiscation proceeding and that the vehicles, in question, shall be produced as and when called upon or required in the confiscation proceeding or otherwise.

List after the decision of L.P.A. No. 1647 of 2015."

9. It would be relevant to note that in L.P.A. No. 1647 of 2015, a Division Bench of this Court while deciding the correctness of the order of confiscation under the

Essential Commodities Act, 1955 of food-grains and vehicles on which the same was being carried as well as the Appellate order and the order passed by the learned single Judge in C.W.J.C. No. 2151 of 2015 upholding the correctness of the aforesaid two orders, namely, the confiscation order as well as the appellate order, referred the matter to the full Bench framing certain terms of reference.

10. The full Bench decided the said L.P.A. No. 1647 of 2015 vide judgment dated 01.11.2018 holding as under:-

"64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation."

11. The show cause and the supplementary show cause filed by the Opposite Party No. 2 would reveal that on production of the certified copy of the order dated 20.03.2017 passed by this Court, the petitioner was directed to furnish sureties as per the order of the Court. The petitioner furnished bonds and sureties on 28.04.2017 showing insurance value of the vehicle as Rs.18,00,000/- and in support to possess the property of Rs.18,00,000/-. The petitioner filed rent receipt of 16 decimals and sale deed No. 3848 dated 24.03.2015 with respect to 16 decimals area of which the rent receipt was issued. The two sureties/bailors, Dhanu Lal Sonkar and Mahendra Kumar Mishra had shown themselves to be owner of vehicles bearing Registration Nos. BR 24T 3459 and BR 24G 5504 and had shown the value of the vehicles to be Rs. 28,00,000/- and Rs.29,00,000/- respectively. A report was called for from the D.T.O., Rohtas about the registered owner of these two vehicles and the value of the 16 decimals area of land. The Circle Officer reported that the value of the land was Rs. 1,36,000/- only. However, the report of the D.T.O. was awaited. In the meantime, advocate appearing for the petitioner in Appeal No. 45 of 2015 requested the opposite party No. 2 to hear the appeal on merits and dispose of the same in accordance with law and on the request of the learned counsel for the appellant the appeal was heard and finally the same was decided on 13.02.2018 whereby the order passed by the Divisional Forest Officer was upheld and the appeal was dismissed.

12. Regard being had to the facts and circumstances of the case and the assertions made in the show cause filed on behalf of the opposite party No. 2, we are of the opinion that no case for initiating contempt proceeding against the opposite parties is made out.

13. The application, being devoid of any merit, is dismissed.