
(2012) 09 JH CK 0007

In the Jharkhand High Court

Case No : Criminal Revision No. 633 of 2012

Raju Kapahi @ Sheru Babu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 34, 414

Citation : (2013) 1 JLJR 532

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; Shree Prakash Jha, for the Respondent

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Heard the learned counsel for the petitioner and the learned counsel for the State. The petitioner is aggrieved by the order dated 7.5.2012 passed in G.R. Case No. 4851 of 2011, by Sri A.M. Tripathi, learned Judicial Magistrate, Dhanbad, whereby, the application filed by the petitioner for release of 10 MT of coal seized from his factory premises, was rejected by the Court below, stating that in the police report, it found mentioned that the seizure of the coal from inside the premises and the coal loaded upon bicycles showed that the seized coal were illegally purchased and they are the material exhibit in this case.

2. The petitioner is an accused in Chirkunda (Kumardhubi) P.S. Case No. 173 of 2011 corresponding to G.R. No. 4851 of 2011 instituted for the offence under Sections 414, 120B, 34 of the Indian Penal Code. The case relates to seizure of 10 MT of coal and an electronic weighing machine from the factory premises of the petitioner and 600 Kgs. of coal from outside the factory premises of the petitioner.

3. It appears from the seizure list attached to the F.I.R., that two cycles were

seized loaded with 300 Kgs. of coal on each cycle, but they were seized from outside the factory premises of the petitioner. The petitioner being the proprietor of the factory in question, filed the application for release of 10 MT of coal and the electronic weighing machine, seized from within the factory premises, annexing therewith the documents showing the valid purchase of the coal. The documents were sent for verification to the police and it appears from the impugned order that the documents of 10 MT of coal were found to be genuine. However, it also finds mentioned in the impugned order that the I.O. reported that the seizure of the coal from outside the premises upon bicycle shows that the seized coal were illegally purchased and that being the material exhibit, the Court below rejected the application for release of coal. From the F.I.R. it appears that so far as the seizure of 10 MT of coal is concerned, they were seized from the factory premises and not from any cycle.

4. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal. It has been submitted that the documents relating to purchase of coal were found to be genuine and 10 MT of coal were seized from the factory premises and not from any cycle, rather only the marks of cycle tyres were found in the factory premises. It has also been submitted that 600 kgs. of coal were recovered from the cycles outside the factory premises, for which, no application had been filed by the petitioner. Learned counsel submitted that in view of the purchase documents submitted by the petitioner which were found to be genuine, the seized coal and the weighing machine ought to have been released in favour of the petitioner, inasmuch as admittedly, they were seized from the factory premises of the petitioner.

5. Learned counsel for the State, on the other hand, has opposed the prayer for release of the same, submitting that the Court below has correctly rejected the application of the petitioner, in view of the fact that the seized coal was the material exhibit in this case.

6. After having heard the learned counsel for both sides and upon going through the record, I find from the F.I.R., that the 10 MT of coal were not seized from any cycle, rather they were lying within the factory premises in small humps. It also appears from the impugned order itself that the petitioner had filed the application for release, claiming the coal to be the purchased property and the documents were found to be genuine.

7. In view of the fact that admittedly, the coal were seized from the factory premises of the petitioner, I am of the considered view that the coal ought to have been released in favour of the petitioner, upon taking such undertakings/ sureties/bonds from the petitioner, including the undertaking that the release of the seized coal and the weighing machine shall not prejudice the prosecution case in any manner whatsoever. In view of the aforementioned discussions, the impugned order dated 7.5.2012 passed in G.R. Case No. 4851 of 2011, by Sri A.M. Tripathi, learned Judicial Magistrate, Dhanbad, is hereby, set aside and the Court below is directed to release 10 MT of coal, as also the weighing machine,

seized from within the factory premises of the petitioner, upon taking such undertakings/bonds/sureties as directed above, as the Court thinks fit and proper in the facts and circumstances of this case. This application is, accordingly, allowed.