

(2008) 07 JH CK 0068
In the Jharkhand High Court

Sochan Sao

APPELLANT

Vs

The State of Jharkhand and Tilak Raj Mewar

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2008) 3 JCR 604

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard the counsel for the parties.

2. This revision application has been filed by the petitioner order dated 30.1.2006 passed by the learned JM, First Class, Hazaribagh, whereby prayer for release of the dumper bearing registration No. BR 13B 9171 seized in Mandu PS Case No. 111 of 2004, was rejected.

3. Facts of the case, in brief, is that the case was registered u/s 379/411 IPC against the driver of the dumper and against the owner thereof on the allegation that the dumper was found carrying illegally mined coal. On seizure of the vehicle the petitioner filed his appearance before the court below claiming ownership of the vehicle and praying for its release in his favour, but the court below rejected the prayer on the ground that the ownership document of the vehicle does not stand in the name of the petitioner. Rather the vehicle was in the name of the opposite party No. 2, Tilak Raj Mewar.

4. Leaned counsel submits that the court below erred in refusing the prayer of the petitioner without considering the fact that though the petitioner is not registered owner of the vehicle, but the person in whose name the vehicle was registered had also appeared before the court below and filed an affidavit explaining that he had sold the vehicle to the petitioner on hire purchase and delivered the possession of the vehicle to the petitioner for commercial use and

therefore he has no objection if the vehicle is released in favour of the petitioner.

5. Sri S.K. Keshari, Advocate has appeared on behalf of the opposite party No. 2 and submits that the opposite party No. 2 has filed counter affidavit explaining the facts and circumstances therein and he has categorically stated that the vehicle though stands in his name, but he has sold the vehicle to the petitioner on hire purchase and that he has received part payment of the consideration amount from the petitioner and is assured of the balance payment and further, that he has no objection for release of the vehicle in favour of the petitioner.

6. A separate counter affidavit has also been filed by opposite party No. 3 who is the police officer of the concerned police station where the vehicle is presently lying after its seizure. The counter affidavit explains the circumstances in which the vehicle was seized and further explains that the vehicle does not stand in the name of the petitioner. Rather, it is in the name of the opposite party No. 2.

7. Admittedly, the vehicle is in the name of opposite party No. 2 and not the present petitioner. It is also on record that the vehicle has been seized in respect of the offence under Sections 379/411 IPC and therefore is not subject to confiscation proceedings. It is true that the vehicle is not in the name of the petitioner but in view of the statement of the person in whose name the vehicle stands made on affidavit that he sold the vehicle to petitioner on hire purchase and has received part payment of the consideration money and has no objection if the vehicle is released in favour of the petitioner from whose possession the vehicle was seized, is a matter that should have been considered by the court below. This is particularly in view of the fact that admittedly the person in whose favour the vehicle stands has himself acknowledged that he sold the vehicle to the petitioner and has received part payment of the consideration money.

8. The court below ought to have considered this aspect and pass appropriate order for release of the vehicle to the petitioner which is lying at the police station since the past over two years.

9. In the facts and circumstances of the case, I find merit in this application. Accordingly, this application is allowed and the impugned order of the court below is set aside and it is directed that the vehicle be released in favour of the petitioner subject to his executing a security bond of rupees seven lakhs with two sureties to the satisfaction of the court below.