

(1995) 06 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11113 of 1993

Umesh Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-06-1995

Acts Referred:

Police Manual Rules — Rule 25

Citation : (1995) 2 PLJR 769

Hon'ble Judges : S.K. Homchaudhuri, J

Bench : Single Bench

Advocate : Brij Kumar Singh, for the Appellant; Indeshwari Pd. Mandal, for the Respondent

Judgement

S.K. Homchaudhuri, J.—The Petitioner's case is that in a mid-night of 13.9.93 Respondent No. 2, Sri R.B. Rajak, the then Officer-in-Charge, Athmalgola Police Station, Sub-division Barh, District Patna came to his residence and forcibly seized the Petitioner's auto rickshaw bearing registration No. BHU 7754 without any authority of law. When the Petitioner wanted to know the reason for seizure of his auto rickshaw Respondent No. 2 abused him and took the auto rickshaw to the Police Station which was situated at a distance of 10 kms. from the Petitioners residence. Petitioner's further case is that he approached Respondent No. 2 for the release of his auto rickshaw but Respondent No. 2 did not release the auto rickshaw and on the contrary Respondent No. 2 changed the registration number of the auto rickshaw from BHU 7754 to BPZ 8755 on its body and also attempted to change the engine number by obliterating the same. Due to illegal seizure and detention of the auto rickshaw for a long time without any authority of law, Petitioner has been deprived of the earning of means of livelihood and deprivation of the earning the means of livelihood coupled to the damages caused to the auto rickshaw, Petitioner has suffered a loss to the tune of Rs. 50,000/-.

2. Respondent No. 2 not having appeared in spite of service of notice of this

Petitioner, this Court was constrained to issue a non-bailable warrant of his arrest and production before this Court. Respondent No. 2 thereafter appeared on 22.9.94 and filed affidavit-in-opposition contending inter alia that he did not receive the notice of the High Court for which he could not appear on the date fixed earlier. In the affidavit-in-opposition Respondent No. 2 also denied the allegations made in the petition that he forcibly took the auto rickshaw from the residence of the Petitioner. In para 9 of the affidavit-in-opposition, Respondent No. 2 contended as follows:

That it is most humbly and respectfully submitted that on 8.10.93 at about 6.00 P.M. the Chaukidars who were deputed for maintaining law and order situation in the evening, came to the P.S. Athamalgola and informed the Respondent No. 2 about an occurrence which was going on at a wine shop which is situated just 200 yards East to the Police Station, Athamalgola and according to the information given by these Chaukidars a Sanha entry bearing Sanha No. 136 dated 8.10.93 was entered and the statement of those Chaukidars were recorded in short and accordingly after recording the version of Chaukidars the Respondent No. 2 proceeded towards the said wine shop and as soon as the Respondent No. 2 reached at the place of occurrence the said wine shop, the person who was making annoyance or disturbing public peace and order after drinking had already fled away, but it was informed by the Chaukidar that person was driving the auto rickshaw, which was standing by the side of wine shop and also informed the deponent about an occurrence and accordingly after entering the statement of the Chaukidars the opposite party No. 2 proceeded towards the wine shop and the auto rickshaw bearing BPZ 8755 was seized at the wine shop which is situated by 200 yards from the Athamalgola P.S. and the seized auto rickshaw bearing No. BPZ-8755 was brought to the Police Station with help of Chaukidars and from that date the said auto-rickshaw was standing in the police station in safe custody and after reaching the P.S. the Respondent No. 2 entered Sanha entry No. 137 dated 8.10.93 at 6.30 P.M. stating therein that the driver of the said auto-rickshaw fled away having seen the police and no identification or" address was available about the said driver and it has also been stated in the Sanha entry that after verification of the document regarding the auto-rickshaw" further action will be taken.

3. Respondent No. 2 further contended that upto 5.6.94 when he had been the Officer-in-charge of Athamalgola Police Station, no person approached the Police Station claiming ownership of the auto rickshaw nor did any person produce any document before him regarding the seized auto rickshaw bearing registration No. BPZ 8755 Respondent No. 2 also denied the allegation that he seized auto rickshaw bearing registration No. BHU 7754 from the residence of the Petitioner and changed the registration number thereof and also obliterated the engine number. Respondent No. 2 specifically denied the contention of the Petitioner that the Petitioner approached him for release of the auto rickshaw.

4. On 15.11.94 in the course of hearing it was submitted by the learned

Government Advocate that an application had been made by the Officer-in-charge of Athmalgola Police Station (the successor of Respondent No. 2 before the A.C.J.M. Barh, bringing to the notice of the Court about the seizure of the auto rickshaw in question. On the basis of the submission this Court passed the following order on 15.11.94 as follows:

Heard counsel for the parties.

The Petitioners has filed the present application for release of an auto rickshaw bearing No. BHU 7754 which according to him was unlawfully seized by Respondent No. 2 who at the relevant time was posted as an officer-incharge, Athmalgola Police Station.

A counter affidavit has been filed, wherein it has been stated that when the vehicle was seized by Respondent No. 2, the driver of the said vehicle fled away and no body claimed to be the owner of the aforesaid vehicle as such the vehicle has kept in the police station. Today the Government Advocate produced a copy of the petition filed by the present Officer-incharge of Athmalgola Police Station addressed to the A.C.J.M., Barh, by which the seizure of the auto rickshaw in question has been given to the A.C.J.M., Barh.

As the matter about seizure of the vehicle has been reported to the A.C.J.M., he is the competent authority in law to decide the question of release of the vehicle. According to the Respondents the Petitioner is not the owner of the vehicle. The Petitioner should file a petition before the A.C.J.M., Barh who will decide the question of release within two weeks of the filing of the petition by the Petitioner. He may also call for a report from the Petitioner before deciding the question whether vehicle should be released in favour of the Petitioner or not. The question as to any action should be taken against Respondent No. 2 or not for not reporting the matter, of seizure of vehicle to the learned Magistrate will be decided after the disposal of release matter.

Put up on 5.12.94. The personal appearance of Respondent No. 2 is dispensed with.

5. On 22.1.95 it was submitted by the learned Counsel for the Petitioner that learned A.C.J.M., Barh after considering the materials placed before him found that the Petitioner was the owner of the auto rickshaw in question and passed the order releasing the auto rickshaw in favour of the Petitioner. This fact of release of the auto rickshaw in question in favour of the Petitioner by the learned A.C.J.M., Barh was not disputed by the learned Government Advocate. After the release of the auto rickshaw only question remains as to whether the Petitioner is entitled to any compensation for the illegal seizure of the auto rickshaw by Respondent No. 2 without any authority of law for long time. By order dated 26.5.95, I fixed 26th June, 1995 for consideration of the claim of compensation of the Petitioner granting leave to Respondent No. 2 to file counter affidavit, if any against the claim of the compensation in the meantime. But no counter affidavit has been filed.

6. According to the Petitioner Respondent No. 2 seized his auto rickshaw on 13.9.93 whereas according to Respondent No. 2 he seized the auto rickshaw on 8.10.93. Be that as it may admittedly Respondent No. 2 had been the Officer-in-charge of Athmalgola Police Station upto 5.6.94. But during the long period from 13.9.93 or 8.10.93 upto 5.6.94 he did not report the fact of seizure to the learned C.J.M. or A.C.J.M., Barh and kept the auto rickshaw in question in his custody in the aforesaid Police Station although as per the mandate of Rule 25 of the Police Manual, it was obligatory on his part to furnish an inventory of seized auto rickshaw to the learned Magistrate of the district without any delay. Rule 25 of the Police Manual is as follows:

Police-Officers to take charge of unclaimed property, and be subject" to Magistrate's- orders as to disposal. It shall be the duty of every Police-Officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

Undisputedly Respondent No. 2 kept the auto rickshaw in his custody in the Police station till he was transferred on and from 5.6.94. It is only after his transfer his successor in office of the Athmalgola Police Station submitted a report before the learned A.C.J.M., Barh about the seizure of the auto rickshaw. It is not disputed that the learned A.C.J.M., Barh on consideration of the documents/materials placed before him was satisfied that the Petitioner was the owner of the auto rickshaw in question and released the same in favour of the Petitioner.

7. On the facts and circumstances of the case it is difficult to accept the contention of Respondent No. 2 that the Petitioner did not approach him for release of the auto rickshaw in question upto 5.6.94. Respondent No. 2 has, thus, kept the Petitioner's auto rickshaw in his custody in the Police Station illegally from the date of seizure thereof for more than nine months without furnishing inventory thereof to the learned Magistrate. Such illegal act without any authority of law on the part of a Police Officer, who is entrusted to maintain law and order, cannot be taken lightly. Apparently due to illegal and arbitrary act of Respondent No. 2, Sri R.P. Rajak, the then Officer Incharge, Athmalgola Police Station, the Petitioner has been subjected to heavy loss and the Petitioner is entitled for compensation. I assess the compensation at Rs. 20,000/- (Rupees twenty thousand). I also hold that Respondent No. 2, namely, Sri R.B. Rajak, the then Officer-in-Charge, Athmalgola Police Station is personally liable to pay the amount of compensation to the Petitioner inasmuch as for his illegal and arbitrary action without any authority of law, public exchequer need not be subjected to suffer. The Secretary-cum-Home Commissioner, Government of Bihar as well as the Director General of Police, Bihar shall ensure that the aforesaid amount is paid to the Petitioner within three months by Respondent No. 2. In case Respondent No. 2 does not pay the amount to the Petitioner within

three months the Government shall pay the compensation amount to the Petitioner within the said period and shall recover the amount from his monthly salary or otherwise.

8. Let copies of the order be sent to the Secretary-cum-Home Commissioner, Government of Bihar and the Director General of Police, Bihar for necessary action.