

(2021) 01 PAT CK 0275

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 9450 Of 2020

Prabhu Dayal

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision:** Jan. 30, 2021**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 451
- Constitution Of India, 1950 - Article 227

**Hon'ble Judges:** Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Ajay Prasad, Alok Ranjan**Final Decision:** Disposed Of

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**Judgement**

1. The matter has been heard via video conferencing.
2. Heard Mr. Ajay Prasad, learned counsel for the petitioner and Mr. Alok Ranjan, learned AC to AAG 5 for the State.
3. The petitioner has moved the Court for the following reliefs:
  - (i) For quashing the seizure list dated 08.01.2020 whereas the respondent Block Supply Officer, Sadar, Khagaria, District - Khagaria seized the Leyland 3118 Truck Vehicle Registration No. JK21C-4707 bearing Chassis No. MB1KADY08FSPSR5412, Engine No. FSPZ141739, Model 2016 hypothecated and financed by IndusInd Bank, Jammu.
  - (ii) For a further direction that the seized truck Leyland 3118, Vehicle Registration No. JK21C-4707, bearing Chassis No. MB1KADY08FSPSR5412, Engine No. FSPZ141739, Model 2016 be released to the petitioner who has power of attorney holder for which

the petitioner is ready to give surety as per direction of this Honâ€™ble High Court.

(iii) For issuance of a direction to the trial Court to dispose of application filed under Section 451 Cr.P.C. for release of the truck which

was seized u/s 7 of Essential Commodities Act in connection with Khagaria PS Case No. 30/2020.

(iv) For grant of any other relief/reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.â€

4. At the outset, learned counsel for the State raised a preliminary objection and submitted that this is the third writ petition for the same cause of

action as earlier the petitioner had moved the Court in CWJC No. 4774 of 2020, which was disposed off by order dated 06.03.2020, permitting the

petitioner to withdraw the application with liberty to approach the learned Court of Sub-Divisional Judicial Magistrate, Khagaria or the appropriate

Court in seisin of FIR under Section 451 of the Criminal Procedure Code, for the purpose of release of the truck in question. Thereafter, the petitioner

moved the Court for the second time in CWJC No. 8160 of 2020 and the same was also withdrawn on 08.10.2020, with liberty to make an application

under Article 227 of the Constitution of India. Learned counsel submitted that CWJC No. 8160 of 2020, was not considered on merits and only at the

threshold, it was permitted to be withdrawn for filing a fresh application under the right provision of law. It was submitted that the same would not give

right to the petitioner to file another writ petition for the same relief as was prayed for in the first writ petition i.e., CWJC No. 4774 of 2020, which he

himself withdrew for approaching the Sub-Divisional Judicial Magistrate, Khagaria. It was submitted that if at all, the said order was not being

complied with, the petitioner has remedy under law to ensure such compliance, but filing of a fresh writ petition for the same cause, as has been done

in the present case, is certainly not permissible.

5. Learned counsel for the petitioner does not dispute the position that he had withdrawn the first writ petition and has moved before the Sub-

Divisional Judicial Magistrate, Khagaria, but according to him, the application is still pending and has not been decided within the stipulated period of

six weeks.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the

objection of learned counsel for the State. Subsequent writ for the same cause cannot be maintainable more so, when the petitioner himself has

withdrawn the writ petition seeking liberty to move before the appropriate forum, to which certain directions were issued and if such directions are not

being complied with, then the petitioner has to approach for getting the order enforced by filing appropriate application before the competent forum.

7. In view thereof, the writ petition stands disposed off with liberty to the petitioner to pursue the remedy for compliance of the order dated 06.03.2020

passed in CWJC No. 4774 of 2020, by the Sub-Divisional Judicial Magistrate, Khagaria, by passing order under Section 451 of the Code of Criminal

Procedure, 1973, relating to release of the truck/vehicle which has been seized in connection with Khagaria PS Case No. 30 of 2020.