

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10195 of 2014

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Raj Kumari Devi, Wife of Sri Punit Sah, resident of village Mohammadpur Badal,
P.S. Sakra , District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Commissioner, Department of Excise, Patna, Bihar.
3. The Superintendent of Excise, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Apurva Kumar & Mr. Kumar Vikram, Advocates
For the State	:	Mr. Anshuman Singh, A.C. to P.A.A.G. 1

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-12-2016

Heard learned counsel for the parties.

The challenge in the present writ application is to the
order of the Judicial Magistrate by which the vehicle in question has
not been released in favour of the petitioner.

Learned counsel for the State raised a preliminary
objection and submitted that the order having been passed under the
provisions of the Code of Criminal Procedure, 1973 (hereinafter
referred to as the 'Code'), the petitioner is required to assail the order
in accordance with the provision of the Code by filing appropriate
application and not under Article 226 of the Constitution of India.
The Court finds such objection to be valid. Since, when there is a
statutory provision equally efficacious available to the petitioner, it is



required that such provision be invoked instead of short circuiting the system by filing a petition under Article 226 of the Constitution of India, which is a prerogative, extraordinary and discretionary jurisdiction of the High Court, to be invoked in cases where the person is otherwise left remediless.

Faced with the situation, learned counsel for the petitioner seeks permission to withdraw the application with liberty to file an appropriate application in accordance with law.

In view of the aforesaid, the writ application stands disposed off with liberty aforesaid. As and when such application is filed, the same shall be considered on its own merits, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J.)

P. Kumar

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