

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.12 of 2017

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1. Pradip Chaudhary S/o Ramphal Chaudhary
 2. Karu chaudhary S/o Kailash Chaudhary Both resident of Village- Bhadeji, P.S.- Muffasil, Gaya, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Home Department & Anr
2. The Officer Incharge of Gaya Muffasil Police Station, District-Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Singh, Advocate

For the Respondent/s : Mr. Parth Sarthi(GA-4)

Mr. Utsav Kumar, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 15-03-2017

In this writ application, the petitioners have challenged the correctness of the order dated 10.11.2016 passed in Gaya Muffasil P.S. Case No. 164 of 2016 whereby the prayer of the petitioners for release of the vehicles has been refused on the ground that Section 60 of the Bihar Prohibition and Excise Act bars jurisdiction of the Court in the matter.

2. Three vehicles were seized in connection with Gaya Muffasil P.S. Case No.164 of 2016 on 07.04.2016 for alleged violation of the provisions of Bihar Excise (Amendment) Act, 2016 and other connected laws.

3. Petitioner Pradeep Choudhary is the owner of motorcycle bearing BR02V 1808 and petitioner Karu Choudhary



is owner of two motorcycles bearing registration No.BR02T 8639 and JH02E 4124.

4. By the impugned order dated 10.11.2016 the learned Chief Judicial Magistrate, Gaya, has refused the prayer of the petitioners to release the vehicles in their favour for the reason that Section 60 of Bihar Prohibition and Excise Act, 2016, bars jurisdiction of the Court in the matter of release of the seized material including the vehicle, which were found to have offended the law, therefore, this Court has no jurisdiction.

5. Submission of the petitioners is that the provisions of Bihar Prohibition and Excise Act, 2016 came into effect from 2nd of October, 2016, and the offence was allegedly committed in the month of April, 2016, hence, the law existing on the date of offence would be applicable. However, the learned Court-below has misdirected itself and failed to exercise jurisdiction vested in it.

6. Learned counsel for the State-respondents submits that Section 68E of the Bihar Excise (Amendment) Act, 2016, which was application on the date of occurrence, also provided bar of jurisdiction of the Court in the matter of release of the seized material. Hence, for technical mistake of the learned Magistrate in mentioning the provision of law it cannot be said that the Court-



below was unjustified in refusing the prayer.

7. Similar matter was under consideration in CWJC No.1791 of 2017 (Krishna Kumar Singh v. The State of Bihar and others) before a Division Bench of this Court and on 16.02.2017 the Court passed the following orders:

“The petitioner has invoked the writ jurisdiction of this Court for release of Bajaj Pulsar Motor Cycle bearing registration No. BR44D- 7186 seized by the Bihar Police in connection with Complaint Case No. 286(O) of 2016 registered under Section 47(a) and 53(b) of the Bihar Excise (Amendment) Act, 2016, which has been sent to the learned District Magistrate-cum-Collector, Buxar for confiscation.

The questions in respect to confiscation of vehicle by the concerned authorities have been referred to the Larger Bench in L.P.A. No. 1647 of 2015. Since the very issue is pending consideration before the Larger Bench, we deem it appropriate to order release of Bajaj Pulsar Motor Cycle bearing registration No. BR44D-7186 to the petitioner on furnishing surety bonds to the satisfaction of the District Magistrate-cum-Collector, Buxar in connection with Complaint Case No. 286(O) of 2016 subject to the condition that the petitioner shall make available the vehicle in question before the authority concerned as and when required during the proceedings under the Bihar Excise Act.

List this case after the decision in L.P.A. No. 1647 of 2015.”



In another case vide Cr. W.J.C. No.605 of 2016 (Smt. Manorama Devi @ Manorma Devi V. The State of Bihar and others), this Court considered the prayer for unsealing of the premises sealed for alleged violation of the Excise laws and disposed of the case on 06.10.2016 with following observation:

“Learned counsel for the petitioner confines to the prayer made in this writ petition to unsealing residential premises of the petitioner, from where allegedly a few bottles of liquor were recovered less than one month after the notification was issued on 05.04.2016.

Considering the facts and circumstances and considering the various orders that have been passed in various cases, we direct that the premises of the petitioner be unsealed without prejudice to the State in respect of any other matter which would be disposed of in accordance with law.

With the aforesaid observation, this application stands disposed of.”

8. In view of the aforesaid decisions, let Collector, Gaya, release the referred vehicle of the petitioners in favour of the petitioners provisionally on petitioners furnishing surety bond of Rs.50,000/- for each of the vehicles along with two sureties. The sureties should be local residents of the territorial jurisdiction of the district with condition that the petitioners shall not dispose



of those vehicles without permission of the authority concerned
and shall produce as and when required.

9. Accordingly, this application stands allowed.

(Birendra Kumar, J)

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