

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.311 of 2018

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Nitu Devi, wife of Harendra Sahni, R/o Village – Bedaul Kionha Tola, P.S.
Aurai, District Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Muzaffarpur
2. The S.P., Muzaffarpur,
3. The Excise Superintendent, Muzaffarpur,
4. The Officer-in-Charge, Muzaffarpur Police Station, District
Muzaffarpur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Hans Lal Kumar, Advocate.

For the Respondent/s : Mr. Vikash Kumar, SC XI.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 30-03-2018

Learned counsel for the petitioner submits that he may be allowed to convert this Criminal Writ Application into a Civil Writ Application because he has challenged the final order dated 09.10.2017 passed in the confiscation proceeding, being Confiscation Case No. 155/2017-18 arising out of Aurai P.S. Case No. 120/2017, on the ground *inter alia* that the power conferred upon the Collector-cum-District Magistrate under the Bihar Prohibition & Excise Act, 2016 for initiation of a confiscation proceeding is not in terms of the constitutional mandate and the very provision conferring such power would be ultra vires to the Constitution of India.

Learned counsel further submits that since similar issue is pending consideration in LPA No. 1647/2015, which has been referred to a larger bench of this Court, she would like to



pursue her remedy in the Civil Writ for purpose of challenging the confiscation order.

Learned counsel for the State has no objection to the petitioner in converting this application into a Civil Writ Application within a period of four weeks from today.

Let the petitioner convert this Criminal Writ Application into a Civil Writ Application within a period of four weeks form today.

Learned counsel for the petitioner submits that the petitioner is ready and willing to abide by the terms and conditions which may be imposed by this Court for provisional release of the vehicle in question.

Considering the facts and circumstances, in the meanwhile, there will be a provisional release of the vehicle (Pickup Van) bearing Registration No. BR06GB-0562, if not auction sold, within one week from the date of production of the proof of ownership and registration of the vehicle in favour of the petitioner, subject to the following conditions:-

(i) Petitioner shall furnish a surety in form of a Bank Guarantee or by depositing original title deeds of the immovable property lying within the jurisdiction of the authority concerned or any other security of like nature valued at Rs. 2,00,000/- (Two lakhs) to the satisfaction of the District Magistrate, Muzaffarpur/authority concerned.

(ii) The petitioner shall also give an undertaking that she will not deal with the vehicle in question and shall not alienate or encumber the same creating any kind of adverse interest against the interest of the State, she will not use the vehicle for any illegal purpose and as and when required, she will produce the vehicle in



question before the competent court/authority.

(iii) At the time of release, the concerned authority/court shall get prepared a photograph duly certified in presence of the petitioner and Panchnama of the vehicle in question shall also be prepared and kept on record which may be used as secondary evidence.

(iv) The petitioner shall undertake not to challenge the said photograph and Panchnama so prepared in her presence at the time of release of the vehicle in question for use in course of trial or the confiscation proceeding, as the case may be.

It is made clear that on failure to take necessary steps to convert this Criminal Writ Application into a Civil Writ Application within the given period of four weeks, this Writ Application shall stand dismissed and the interim order shall also stand withdrawn.

(Rajeev Ranjan Prasad, J)

Dilip, AR

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