

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8513 of 2018

In
Criminal Writ Jurisdiction Case No.565 of 2018

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Raj Kishore Singh son of Kamo Singh, R/o village- Bilanpur, P.S.- Teghra,
District- Begusarai Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Excise Department, Bihar, Patna
2. The District Magistrate, Begusarai, Bihar, Patna
3. The Superintendent of Police, Begusarai
4. The S.H.O., Barauni (Garhara), District- Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Sumiran Rai, Advocate
For the Respondent/s : Mr. Vikash Kumar -SC11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 03-12-2018 Heard learned counsel for the petitioner and Mr. Vikash Kumar as well as Mr. Anil Kumar Sinha, learned counsel representing the State.

This application has been preferred for release of the vehicle (TVS Motorcycle) bearing registration No. BR09T-6830 which has been seized in connection with Barauni (Garhara) P. S. Case No. 450 of 2016 registered for the offence under Section 30 (a), 53 (a) of Bihar Prohibition & Excise Act, 2016.

Apart from a prayer for release of the vehicle the petitioner has also prayed for quashing of the order dated 12.09.2017 passed by the Collector -cum- District Magistrate,



Begusarai in Confiscation Case No. 125 of 2017 by which a direction to confiscate the vehicle has been passed by the District Magistrate being the Confiscating Authority.

Earlier an issue was raised in some of the writ applications that the District Magistrate being an executive may perhaps cannot take a judicial function and the power to confiscate vested with the District Magistrate -cum- Collector is arbitrary and not in accordance with law. The said issue was pending consideration before the Hon'ble Full Bench of this Court in a case arising out of and under the Essential Commodities Act in L.P.A. No. 1647 of 2015 and other analogous matters. The Hon'ble Full Bench vide its judgment dated 01.11.2018 passed in L.P.A. No. 1647 of 2015 has answered the reference saying that the District Magistrate-cum-Collector while passing the order of confiscation is not passing an order of punishment or penalty and therefore, it cannot be said that the District Magistrate would not be competent to pass an order of confiscation as the 'confiscation' is not an order of 'punishment' or 'penalty'.

In that view of the matter, so far as the challenge to the order of confiscation passed by the Collector in the present case is concerned, learned counsel representing the petitioner



submits that he would not press this prayer at this stage and shall seek liberty to challenge the order of confiscation before the appellate authority within a period of 30 days from today.

Learned counsel, however, submits that under the provisions of the Bihar Prohibition and Excise Act, 2016 there is no provision whereunder the appellate authority could pass an interim order of release of vehicle on any condition which may be prescribed to protect the interest of the State. Since no such power is vested with the appellate authority, learned counsel submits that the vehicle may be allowed to be provisionally released at this stage and during the pendency of the appeal which will be preferred by the petitioner within a period of 30 days from today. The prayer is, thus, to allow a provisional release of the vehicle at this stage and during the pendency of the appeal.

Learned counsel further submits that a provisional release of the vehicle is desired in the facts and circumstance where the vehicle is under seizure since 14.12.2016 and is lying under open sky as nobody is there to take care of the vehicle and even after two years if the vehicle is not released, in all probabilities the vehicle will lose its road worthiness and is liable to become a junk. It is further submitted that so far as the



confiscation proceeding is concerned, it is in the nature of civil liability and in ultimate analysis if the petitioner is held liable to compensate the State, he is ready and willing to provide a surety bond or the bank guarantee, as the case may be, taking note of the quantity of the illicit liquor which has been allegedly recovered from the vehicle. Learned counsel further submits that the petitioner would also be ready and willing to furnish such undertakings and affidavits which may be required to protect the interest of the State.

Mr. Vikash Kumar and Mr. Anil Kumar Sinha, learned counsel representing the State have jointly submitted that now in view of the Hon'ble Full Bench judgment of this Court, so far as the power of Collector is concerned, there is no dispute that the Collector will be competent to entertain an application for confiscation of the vehicle involved in carrying alleged illicit liquor. Learned counsel submits that the Hon'ble Full Bench has no doubt held that a writ application under Article 226 of the Constitution of India or an application under Article 227 of the Constitution of India may be entertained as there cannot be any statutory bar against such exercise of power by the Hon'ble High Court, the Hon'ble Full Bench has also put a word of caution saying that,



“Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statue except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically obtained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as *sentinel on the qui-vive*, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.”

As the argument progressed, Mr. Vikash Kumar, learned counsel representing the State took a stand that since the



appellate authority has got no power to pass an interim order of release and in the given facts and circumstance, if at all the court considers provisional release perhaps, the interest of the State may be protected by imposing a condition upon the petitioner to provide a bank guarantee or the surety bond, as the case may be, during the pendency of the appeal and then only provisional release may be allowed.

Mr. Anil Kumar Sinha, learned counsel for the State has still tried to impress upon this Court that the power of this Court under Article 226 of the Constitution of India are circumscribed by the certain self imposed restrictions and therefore, the Court may consider all aspects of the matter while exercising the power under Article 226 of the Constitution of India and only in cases where it is found to be a case of gross injustice, the discretion under Article 226 may be exercised.

Learned counsel further submits that where a procedural error occurs in the order of confiscation, as per the judgment of the Hon'ble Full Bench, the application under Article 226 of the Constitution of India may still be entertained against the order of confiscation.

Having heard learned counsel for the parties and on perusal of the records, we find that this case (F.I.R.) has been



registered as back as o 14.12.2016 when the vehicle being a TVS Motorcycle was seized by the Police personnel. The Police seized the vehicle when found that the person running the vehicle is in drunken stage and on search the Police found one bottle of Royal Stag foreign liquor containing 750 ml. from the vehicle. The vehicle is lying in Police Station for last two years. Admittedly, till date the vehicle has not been auction sold.

In these conditions, where vehicle is lying under open sky for last two years, we find that in absence of their being any provisional release of vehicle by the appellate authority, it would become a junk and of no use, therefore, it is a fit case where we should exercise our discretion under Article 226 of the Constitution of India to direct the provisional release of the vehicle at this stage and during pendency of the appeal for which we grant liberty to the petitioner to present the appeal within 30 days from today, failing which order of provisional release shall be recalled by the District Magistrate-cum-Collector. While doing so we would also protect the interest of the State.

Let the vehicle in question be released provisionally in favour of the petitioner on the petitioner's producing the document of ownership and registration in his name before the



District Magistrate, Begusarai (Confiscating Authority) with two surety bond to the extent of the value of the vehicle as indicated in the insurance document. The petitioner while submitting the surety bond shall also furnish the following affidavits/undertakings:-

(i) That the vehicle in question has never been involved in any offence of similar nature in past.

(ii) That the petitioner shall not indulged in creating any third party right or interest in respect of the vehicle during the pendency of the appeal and shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release of the vehicle a Panchnama would be prepared by the confiscating authority wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The petitioner shall undertake not to challenge the said Panchanama in course of trial.

Subject to the above conditions, following the views



expressed by the Hon'ble Division Bench of this Court and in tune with that, we dispose of this application.

The release shall be allowed within a period of 7 days from the date of submission of the surety bond and the undertakings as stated above. This would, however, be subject to the order passed in appeal.

At this stage it is noticed that in the present case there is already an order dated 16.03.2018 for provisional release of the vehicle in question. In view of discussed order passed hereinabove, the order dated 16.03.2018 whereby the leave was granted to learned counsel to convert the criminal writ petition which order also contained an order of provisional release of the vehicle in question shall stand confirmed by the present order.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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