

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3005 of 2019

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Anant Kumar Mishra S/o Mahesh Mishra Resident of Village-Madanpur,P.S.
Lakhanaur,Dist.-Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition,Patna
2. The Collector-cum-District Magistrate,Darbhangha
3. The Superintendent of Police, Darbhanga
4. The Station House Officer, Sakatpur P.S.,Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Suraj Narain Yadav, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP 7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 02-05-2019

Heard Mr. Suraj Narayan Yadav, learned counsel for
the petitioner and Mr. Vivek Prasad, learned GP 7 for the State.

This writ petition is filed with a prayer to quash the
confiscation order dated 26.10.2018 passed by the District
Magistrate, Darbhanga in Excise Confiscation Case No.114 of
2018 in purported exercise of power vested in him under the Bihar
Prohibition and Excise Act, 2016 (hereinafter referred to as ‘the
Act’), whereby while directing confiscation of Indigo Manza Car
bearing Registration No. UP16CT-0457 for alleged violation of the
provision of the Act that he has also directed for confiscation of an



amount of Rs.41,650/- which was found in possession of the driver of the Car with two mobile phones – one GIONEE make and another NOKIA make, having the following SIM Numbers:

8292696209 and 9570804585/9650495017,
respectively

While bearing note of the appellate remedy available to the aggrieved under Section 92 of the Act, we had put the confiscating authority, i.e. District Magistrate, Darbhanga on notice as to the power vested in him under Section 58 read along side Section 56 of the Act for ordering confiscation of the cash and the mobile phones because Section 56 of the Act which lists the things liable for confiscation does not include either mobile phone or ready cash.

A counter affidavit has ultimately been filed by the District Magistrate but is evasive because even while referring to the provisions of Sections 56 and 58 of the Act, the District Magistrate, Darbhanga has not been able to demonstrate the power vested in him to confiscate either cash or mobile phones.

In such view of the matter and in so far as the confiscation order relates to the vehicle, we allow the petitioner to take recourse to the appellate remedy along with a petition for condonation of delay within 30 days from today and in case such appeal is filed, the appellate authority shall consider the appeal and



dispose of the same in accordance with law on merits bearing in mind that the matter was being pursued before the High Court.

In so far as the confiscation of ready cash of Rs.41,650/- and two mobile phones are concerned, having already expressed our opinion above, we quash the confiscation order to that extent for there is no power in the confiscating authority either under Section 56 or under Section 58 or any other provision to order for confiscation of cash or mobile phone(s). The order of the confiscating authority dated 26.10.2018 in Excise Confiscation Case No. 114 of 2018 in so far as it orders confiscation of cash of Rs.41,650/- and two mobile phones of the petitioner (Gionee and Nokia) are quashed and set aside. The order of confiscation stands modified to that extent.

As a consequence, the Confiscating Authority-cum-District Magistrate, Darbhanga is directed to ensure the return of the cash amounting to Rs.41,650/- to the petitioner along with the two mobile phones within 14 days of receipt/production of a copy of this order.

At this stage, Mr. Yadav, learned counsel representing the petitioner prays for interim relief in so far as the vehicle is concerned, because indisputably the appellate authority has no power to order for provisional release of the vehicle. Mr. Vivek



Prasad, learned GP 7, while objecting to the interim prayer informs that there has been recovery of about 57 liters of Indian made foreign liquor from the Car in question and thus the petitioner is not entitled to any interim relief.

Having heard learned counsel for the parties on the interim relief and considering the past precedence and the orders passed by this Court, while taking note of recovery of 57 liters of liquor from the car of the petitioner, we direct the Confiscating Authority-cum-District Magistrate, Darbhanga to provisionally release the vehicle in question pending final disposal of the appeal of the petitioner, on production of ownership and registration papers with respect to the vehicle in his name with one surety and a Bank Guarantee or original title deed of immovable property situated within the district to the extent of the value as indicated in the insurance document. The petitioner while submitting the surety and the bank guarantee or the original title deed, as the case may be, 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 and shall not indulge in similar offence in future.

(ii) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle



during the pendency of the proceeding 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 *Panchanama* would be got prepared by the Collector-cum-District Magistrate, Darbhanga, 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 furnish an undertaking not to challenge the said *Panchanama* in course of trial.

The release shall be allowed within a period of 14 days from the date of production of ownership/registration papers supporting the claim of the petitioner together with one surety along with the bank guarantee to the extent of the value of the vehicle as indicated in the insurance amount and the undertakings as stated above. This release would, however, be subject to finalization of the appeal proceedings. The title deed papers shall remain in safe custody of the Confiscation Authority concerned subject to final decision in the confiscation proceedings.



It goes without saying that should the petitioner default in preferring the appeal, this order shall stand recalled and the confiscating authority shall be at liberty to proceed in accordance with law.

With the observations/directions above, the writ petition is allowed.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08/05/2019
Transmission Date	N.A.

