

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16558 of 2018

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Rajesh Raut Son of Shambhu Raut, Resident of Village- Panchhor,
Panchayat- Kusmari, P.S.- Riga, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through The Principal Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Sitamarhi.
3. The Superintendent of Police, Sitamarhi.
4. The Officer-in-Charge, Mejarganj, Police Station, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Mishra, Adv.
For the Respondent/s : Mr. Rewati Kant Raman, A.C. to SC-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 11-03-2019

Heard learned counsel for the parties.

This writ petition was initially filed for provisional release of the Motorcycle of the petitioner bearing registration No. BR-30J-0558 which was seized by the police in connection with Mejorganj P.S. Case No. 270 of 2017 instituted for the alleged offence under Sections 30(A) and 41(A) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act').

A counter affidavit was filed enclosing the order dated 14.11.2017 passed by the District Magistrate -cum- Collector, Sitamarhi in Confiscation Case No. 01 of 2017 whereby the motorcycle of the petitioner had been confiscated.



The petitioner files interlocutory application being I.A. No. 01 of 2019 seeking leave of this Court to question the order of confiscation although learned counsel for the petitioner submits that he has no information of the confiscation case but there is no such statement made in the interlocutory application so filed which simply questions the confiscation order on the ground that no recovery was made from the motorcycle in question. The statement made by the petitioner to question the confiscation order is supported from the seizure list, a copy of which is enclosed as Annexure-2 at running page-18 to the writ petition and which itself shows no seizure of any prohibited item under 'the Act'.

Mr. Rewati Kant Raman, learned Assisting Counsel to S.C.-11, opposing the writ petition submits that the petitioner was actually acting as informer regarding the presence of the excise police officials and was guiding the illegal consignment but, in our opinion, such kind of presumptuous opinion by the respondents cannot lead to any seizure much less a confiscation order as there is nothing in dispute that no recovery of any prohibited item of any intoxicant or any liquor or any material capable of being used of such was made from the motorcycle of the petitioner, hence, the seizure was illegal and surprisingly the District Magistrate -cum- Collector, Sitamarhi was not bothered to satisfy himself on this count. The confiscation order is mechanical and without having regard to the stipulations present under 'the Act'.



Mr. Rewati Kant Raman, has been fair enough to ascertain the status of the vehicle in question whether or not it has been auctioned in view of the earlier order passed and submits that the auction with respect to vehicle in question has not taken place.

For the reasons, discussed above, the seizure of the vehicle of the petitioner bearing registration No. BR-30J-0558 together with the order of confiscation dated 14.11.2017 passed in confiscation Case No. 01 of 2017 cannot be upheld and consequently, the seizure list as well as the order of confiscation to the extent it relates to the vehicle of the petitioner cannot be upheld and is, accordingly, set aside to that extent.

The District Magistrate- cum- Collector, Sitamarhi is directed to release the vehicle of the petitioner bearing registration No. BR-30J-0558 within a period of 14 days of receipt or production of a copy of the judgment subject to production of ownership document.

This writ petition is allowed with the direction above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2019
Transmission Date	

