IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10979 of 2019

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Ganga Ram Mandal @ Gagandeo Mandal, aged about 40 years, Male, Son of Late Bihari Mandal, Resident of Village- Parsa, P.S.- Pipra, District- Supaul.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar at Patna.
2. The District Magistrate, Supaul, District- Supaul.
3. The Superintendent of Police, Supaul, District- Supaul.
4. The Officer Incharge of Kishanpur Police Station, District- Supaul.

... ... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : Mr. Kumar Manish (SC5)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 05-12-2019

None appears for the petitioner, however, Mr. Kumar Manish, learned Standing Counsel No. 5 represents the respondents.

2. The writ application has been filed for a direction to the respondent authorities to release the TVS Star City (BSIV) motorcycle bearing Registration No. BR50J1834 seized in connection with Kishanpur P.S. Case No. 206 of 2018 registered under the provisions of Section 30(a) of the Bihar Prohibition And Excise Act, 2016 [hereinafter referred to as 'the Act'].

3. The relief as claimed for by the petitioner has been stipulated in paragraph no. 1 of the writ petition, which reads as follows:-

"That this civil writ is being filed on behalf of the petitioner above named for direction to release the motorcycle of the petitioner i.e. TVS Star City (BSIV), bearing Registration No. BR50J1834 having its Chasis No. MD625FF12HIN19269 (as per seizure list Chesis No. MB625FH12H1N1926 its wrong) and Engine No. FF1NH195-5084, which has been seized by the respondent No. 4 in Kishanpur P.S. Case No. 206 / 2018. And for any other appropriate writ/ writs, order/orders, direction /directions as this Hon'ble Court thinks fit and proper in the facts and circumstances of the case."

4. The prosecution case got initiated when during patrolling on 09.08.2018 the Police party intercepted the motorcycle bearing Registration No. BR50J1834 from which 63.300 liters of Nepali liquor was recovered. The person who was apprehended with the motorcycle disclosed his name as Ganga Ram Mandal @ Gagandeo Mandal (i.e. the petitioner). Consequently, the seizure list was prepared. The motorcycle was not having any Registration plate and the seizure list depicts only the Engine No. and Chasis No.

5. However, in paragraph no. 5 of the writ application the petitioner has claimed that the seized motorcycle bears Registration No. BR50J1834 and has brought on record the

registration document as Annexure- 2 to the writ petition. Paragraph no. 5 of the writ application reads as follows:-

> *"That the petitioner is registered owner of the seized motorcycle having registration No. BR50J1834, Chesis No. MD625FF12H19269 and Engine No. FF1NH1955084."*

6. Though, counter affidavits have been filed on behalf of respondent nos. 2 to 4 and 5 , but they have not controverted the claim of the petitioner with regard to the registration of the seized vehicle.

7. Mr. Kumar Manish, learned Standing Counsel No. 5 drew our attention to the order dated 12.01.2019 passed by Collector, Supaul in Excise Case No. 395 of 2018 which suggests that in spite of substituted service of notice through newspaper publications, the petitioner did not appear, as a result of which the vehicle in question which was not having any Registration number was confiscated and the Motor Vehicle Inspector, Supaul was directed to assess the minimum price, whereas, Superintendent, Excise, Supaul was directed to put the motorcycle to auction sale.

8. In these circumstances, the present writ application is not maintainable as there is specific provision of Appeal under Section 92 of the Act.

9. Considering the submission of Mr. Kumar Manish, learned Standing Counsel No. 5, we are also of the view that the exercise of jurisdiction under Article 226 of the Constitution of India is a discretionary jurisdiction having self imposed restrictions, which can only be exercised when there is no alternative efficacious remedy or the order is without jurisdiction or it violates the fundamental rights or the principles of natural justice as has been held by the Hon'ble Supreme Court in the case of *Commissioner of Income Tax and Ors. Vs. Chhabil Dass Agarwal reported in (2014) 1 Supreme Court Cases 603.* Paragraph nos. 15 and 16 of the judgment read as follows:-

> *"15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High*

Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment / re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an *appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."*

10. Section 92(2) of the Act stipulates filing of Appeal against the final order of Collector in any confiscation proceeding before the Excise Commissioner.

11. Hence, the writ application is disposed of with a liberty to the petitioner to prefer Appeal within a period of four weeks along with the limitation petition before the appellate authority. It is expected from the Appellate Authority to decide the appeal expeditiously, considering the delayed filing sympathetically, in view of the fact that the writ application was pending before this Court.

12. It is made clear that we have not expressed any opinion with regard to the merits of the case.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16-12-2019
Transmission Date	NA