

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9285 of 2018

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Mahesh Kumar Ray, Son of Late Ramchandra Ray, Resident of Village-
Patedha tok, P.S. Vaishali Belsar O.P., District-Vaishali ... Petitioner
Versus

1. The State Of Bihar
2. The Collector-Cum-District Magistrate Vaishali at Hajipur
3. The Superintendent of Excise, Vaishali at Hajipur
4. The Superintendent of Police Vaishali at Hajipur
5. The Station Head Officer Vaishali Police Station, Belsar O.P., Vaishali

... .. Respondents

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Appearance :

For the Petitioner : Mr. Kunwar Ajit Singh, Adv.
For the Respondents : Mr. Vikash Kumar, SC XI

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

8 21-01-2019 Heard Mr. Kunwar Ajit Singh, counsel for the
petitioner, and Mr. Vikash Kumar, S.C. XI, for the State.

The writ petition was filed seeking a direction to the
respondent no. 2, i.e., the Collector, Vaishali at Hajipur, to
release the Bolero vehicle bearing registration no. BR-31P-0574
allegedly seized in connection with Vaishali (Belsar O.P.) P.S.
Case No. 174 of 2017 for alleged violation of the provisions of
the Bihar Prohibition and Excise Act, 2016.

While this matter is pending consideration, the final
order has been passed on the confiscation case which was
initiated following the seizure bearing Misc. (Confiscation)
Case No. 84 of 2018-19 and learned Collector, Vaishali at



Hajipur, by his order, dated 24.07.2018, has been pleased to order for confiscation of the vehicle. Learned counsel, while placing the copy of this order through Interlocutory Application No. 9447 of 2018, sought permission to question the same. According to him, this order is ex parte and without proper service of notice of such proceedings to the petitioner.

Taking note of the circumstances, the grievance advanced in respect of the seized vehicle as well as the final orders passed on the confiscation proceedings that this Court vide order passed on 17.12.2018, directed the State to file its affidavit on the issue of denial of opportunity of hearing in the confiscation proceedings advanced by the counsel for the petitioner.

Separate counter affidavits are filed by the respondents and in so far as the issue of ex parte hearing raised by the petitioner is concerned, the respondents 2 and 3 have mentioned in paragraph 7 that notice was served by the process server on 23.07.2018.

Mr. Kunwar Ajit Singh, counsel for the petitioner, in reference to the notice placed on record at Annexure 'C' to the counter affidavit of the respondents 2 and 3, submits that the notice does not bears any receiving and apart therefrom, while



the notice is said to have been served on the petitioner on 23.07.2018, the final order has been passed by the Collector, Vaishali at Hajipur, on the very next day, i.e., 24.07.2018, which by itself, demonstrates the hurried disposal by the Collector.

We have heard the learned counsel for the petitioner and we have perused the records. The petitioner by filing rejoinder petition has specifically denied the service of notice of hearing in the confiscation case and two aspects of the matter does persuade us to believe him, namely, (a) the copy of the notice, enclosed at Annexure 'C', does not bear the signature of the recipient demonstrating service of notice; and (b) according to the process server himself, even though the house was found open yet he did not meet either the petitioner or any of the family members and so he effected house service. Again, the house service is denied by the petitioner.

Mr. Vikash Kumar, learned SC XI, at this stage, submits that the pleadings in reference to Annexure 2 shows that although a sale letter has been issued by the vehicle owner in favour of the petitioner, but the registration of the vehicle has not yet been transferred in favour of the petitioner. According to the learned counsel vehicle still remains registered with the original owner.



In our opinion, in circumstances noted, neither the confiscation order could have been passed against the petitioner, who is yet to become a registered owner of the vehicle nor the petitioner can espouse the cause of the vehicle owner on release.

For the reasons, discussed above, the order, dated 24.07.2018, passed in Misc. (Confiscation) Case No. 84 of 2018-19 is **quashed**. The Collector, Vaishali at Hajipur, shall be at liberty to proceed in the matter afresh in accordance with law against the registered owner of the vehicle.

In so far as the prayer for release of vehicle is concerned, since, the petitioner is not the registered owner of the vehicle, we cannot grant any indulgence to such prayer at this stage.

The writ petition is **allowed** to the extent indicated above.

(Jyoti Saran, J)

(Nilu Agrawal, J)

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