IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13664 of 2019

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Ram Dular Paswan, Son of Harihar Paswan, R/o Village Manki, P.S.- Shivsagar, District- Rohtas at Sasaram.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate cum Collector, Kaimur at Bhabua.
4. The Senior Superintendent of Police, Kaimur at Bhabua.
5. The Station Head Officer Police Station, Mohaina, Kaimur at Bhabua.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr.Tribhuwan Narayan, Adv.
For the Respondent/s : Mr.Kumar Manish, SC-5

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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 : 20-12-2019

Heard learned counsel for the petitioner and the respondents.

The present Writ Application has been filed for release of Bolero vehicle of the petitioner, bearing Registration No. BR26D-2193 seized in connection with Mohania P.S. Case No.115 of 2019, registered for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, as amended by Amendment Act 8 of 2018 (hereinafter referred to as the 'Act').

The prosecution case got initiated on the basis of written report of Shardendu Sharad submitted to the S.H.O., Mohania is to the effect that during patrolling on 07.03.2019 at 6.30 P.M., after having received a secret information to the effect that through a Bolero vehicle huge quantity of liquor is being transported, a raid was laid near the shop of Munna Chaudhary when on seeing the police party few persons started fleeing away from the shop, but on chase being made by the police, three persons were apprehended who disclosed their names as, Lalan Kumar, Md. Aarif, Md. Salim. Subsequently, the shop and the vehicles which were parked there were searched and from the shop of Munna Chaudhary, 259.200 litres, from the Logan vehicle, 8.640 litres and from the Bolero vehicle, 18.900 litres of Indian Made Foreign Liquor were recovered, leading to registration of Mohania P.S. Case No.115 of 2019, registered for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, as amended by Amendment Act 8 of 2018.

It is submitted by learned counsel for the petitioner that the petitioner claims to be the registered owner of the vehicle in question and the registration certificate of the vehicle in question has been brought on record as Annexure-2 to the writ application.

A counter affidavit 19.12.2019 has been filed on behalf of Respondent Nos. 3, 4 and 5 bringing on record the final order dated 06.11.2019 passed by the Collector-cum-the District Magistrate, Bhabua in Confiscation Case No. 216 of 2019, as contained in Annexure-B to the counter affidavit, whereby, the Bolero vehicle of the petitioner bearing Registration No. BR26D-2193 has been confiscated and the Excise Superintendent, Kaimur, Bbabua was directed to auction the seized vehicle within a period of thirty days and deposit the said amount in the treasury.

Learned counsel for the petitioner further submits that the present writ application was registered on 05.07.2019 and thereafter on the request of learned AC to SC-5, the matter was adjourned for 25.11.2019 enabling him to obtain instructions and to file counter affidavit but again vide order dated 02.12.2019, on the basis of similar prayer of learned AC to SC-5, the matter was adjourned for 25.09.2019, whereas the notices have been issued in the confiscation proceeding on 24.07.2019 and the final order has been passed on 06.11.2019. The aforesaid order suggests that the final order confiscating the Bolero vehicle of the petitioner has been passed during pendency of the writ application.

Learned counsel for the State submits that the final order in confiscation proceeding has been passed and the vehicle in question has already been confiscated and against the final order of confiscation, appeal lies under Section 92 of the Act. Hence, we are of the view that the order has been passed by the Collector in consonance to the provision under Section 58(2) of the Act.

Considering the fact that the final order has been passed in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal in Chapter IX under Section 92(2) of the Act against the order passed by the Collector, before the Excise Commissioner, within ninety days of the order complained of, this Court is not inclined to interfere in the matter.

It is well settled that the discretionary jurisdiction under Article 226 of the Constitution of India being a self-imposed restriction can only be exercised when the writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1 has held as follows:

> "15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely or some old decisions of the evolutionary era of the constitutional law as they still hold the field."

Accordingly, this writ application is disposed of with a liberty to the petitioner to prefer appeal within a period of four weeks from the date of receipt/production of a copy of this order whereupon the appellate authority is expected to consider and dispose of the appeal within a period of ten weeks from the date of its filing.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NIL
Uploading Date	24.12.2019
Transmission Date	NIL