

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12381 of 2019

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Md. Intezar Alam, S/o Md. Mukarram Alam, Resident of Village
Moudho, Ward No.10, PO - Moudho, P.S. - Kochadhaman, Mahadha, Dist. -
Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of
registration, Excise and Prohibition, Govt. of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The District Magistrate-cum-Collector, Purnea
4. The Officer in Charge, Dagarua, Dist. Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bijendra Kumar Singh, Adv.
For the Respondent/s : Mr. Vivek Prasad (Gp7)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 21-12-2019

Heard learned counsels for the parties.

The present writ application has been filed for
release of Maruti Wagon R VXi bearing registration number



BR37R6333 seized in connection with Dagarua P.S. Case No. 40 of 2019, registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act') as well as Sections 272 and 273 of the Indian Penal Code.

It is alleged that from the vehicle in question 96 litres of Indian Made Foreign Liquor were recovered.

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

This is an admitted position that the confiscation proceeding has not been initiated. Statement to that effect has been made in paragraph 4 of the counter affidavit filed on behalf of Respondent No.4, which reads as follows:

“4. That it has learnt that Confiscation proceeding has not yet been initiated & the said vehicle is lying at Dagarua Police Station.”

Section 58 of the Act mandates the procedure of confiscation by the District Collector. Sub-Section (1) of Section 58 of the Act starts with *nonobstante* clause and suggests that notwithstanding anything contained in the Act, where anything is liable for confiscation under the Act, is seized



or detained, the officer seizing and detaining such property shall without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area. Section 58(2) of the Act provides that when the District Collector is satisfied that an offence under the Act has been committed, he may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property. Section 58(3) of the Act suggests that the Collector, before passing an order under Section 58(2) of the Act, shall give reasonable opportunity of being heard to the person concerned.

Since there is a bar under Section 60 of the Act for any court to pass any order with regard to the seized vehicle, the Special Judge has no jurisdiction to release the vehicle. However, this bar under Section 60 of the Act will not apply in exercise of the jurisdiction under Article 226 of the Constitution of India. Hence, in such a circumstance, the case comes within one of the exceptions where despite the availability of alternative remedy, the Court can exercise jurisdiction under Article 226 of the Constitution of India, as incorporated in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1.



Paragraph 15 reads 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 on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing it to rot will ultimately reduced to a junk which has been depreciated by the



Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* reported in (2010) 6 Supreme Court Cases 768.

The learned counsel for the respondents does not object to the provisional release of the vehicle, hence we direct that the same be released provisionally till the conclusion of the trial to the satisfaction of the learned A.D.J.-cum-Special Judge (Excise), Purnea, on the following conditions :-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers before the learned ADJ-cum-Special Judge (Excise), Purnea;

(II) The petitioner will furnish surety bond of Rs.50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the Special Court concerned or the confiscation authority, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating any kind of adverse



interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

The entire exercise will be done by the Special Judge within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to the ownership of the vehicle in question.



Accordingly, the writ application is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Upadhyay, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NIL
Uploading Date	20.01.2020
Transmission Date	NIL

