IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14447 of 2019

Pravin Kumar Mandal Son of Sarveshwar Mandal Resident of Village- Kandedih, Post Office- Brahmandiha, Police Station- Topchanchi, District- Dhanbad (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Commissioner Excise Department Govt. of Bihar, Patna.
3. The District Magistrate Gaya.
4. The Superintendent of Police Gaya.
5. The Station House Officer Town Police Station, District- Gaya.
6. The Sub- Inspector of Excise Dobhi Check post, District- Gaya.

... ... Respondent/s

Appearance :
For the Petitioner/s : Mr.Yogendra Kumar Singh
For the Respondent/s : Mr.Vivek Prasad (G P 7)
Mrs. Manisha Singh

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

Date : 13-12-2019

Heard Mr. Yogendra Kumar Singh, learned counsel for the petitioner and Mrs. Manisha Singh, learned AC to GP 7 for the respondents.

The present writ application has been filed for a direction to the respondent authorities to release Hyundai Verna Car bearing Registration no. JH 10Q 7422, seized in connection with Excise Case No. 280 of 2018, registered under Section 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as the Act). The relief claimed by the petitioner in paragraph 1 of the writ petition reads as follows:

> "To release Hyundai Verna Car CRDI VGT Sex 1-5 vehicle bearing Registration No. JH-10Q-7422, Engine No. D4FA7H701147, Chassis No. MALCN41VR8M041217A of the petitioner which has been illegally seized in connection with Excise Case No. 280 of 2018 registered for the offences under section 30(a) of Bihar Prohibition of Excise Amendment Act, 2016 on 07/08/2018 against the petitioner."

According to the prosecution report dated 7.8.2018 submitted by the SI of Excise, Ms. Rubi Kumari, during the course of vehicle check, the vehicle in question was intercepted and from the luggage boot of the vehicle, 67.500 litres liquor were recovered, consequently, the vehicle in question was seized, leading to registration of Excise Case No. 280 of 2018.

Learned counsel for the petitioner submits that the petitioner claims to be the owner of the vehicle in question and has sought for release of the same.

Learned AC to G.P. 7 has filed counter affidavit today on behalf of Respondent No. 3, the Superintendent of Police, Gaya, taking specific stand in paragraph 9 thereof that Excise Case

No. 334 of 2018 was initiated on the recommendation made for the same under Section 58(1) of the Act and ultimately, the District Magistrate, Gaya vide order dated 23.10.2018, after hearing counsel for the owner of the vehicle in question (petitioner), confiscated the vehicle and directed the Assistant Excise Commissioner, Gaya to get the value of the vehicle assessed by the Motor Vehicle Inspector and thereafter sell the vehicle through auction.

However, from the counter affidavit, it does not appear that the vehicle in question has been put to auction sale. Learned counsel appearing for the State submits that she has no information to that effect.

Considering the fact that the final order has been passed in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal by virtue of Section 92(2) of Chapter IX 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 law that the discretionary jurisdiction under Article 226 of the Constitution of India is subject to self-imposed restriction and such discretion can be normally exercised when there is no alternative remedy available or 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 under challenge. 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 on 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 along with an application for condonation of delay. If such appeal is filed by the petitioner, the appellate authority is expected to consider application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a period of ten weeks from the date of its filing.

Needless to say, in case the vehicle in question has not been auction sold till date, it will not be put on auction sale till the disposal of appeal before the appellate authority, if so filed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	