

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13690 of 2019

In

Criminal Writ Jurisdiction Case No.2923 of 2018

Pradeep Kumar Mehta S/o Chhotan Mehta, R/o Village :- Sandalpur, P.S.
Kasim Bazar, District : Munger

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna
2. The Excise Commissioner, Patna Bihar
3. The District Magistrate, Lakhisarai
4. The Superintendent of Police, Lakhisarai
5. The Station House Officer cum Officer incharge, Piri Bazar Police Station in the District of Lakhisarai

... .. Respondent/s

Appearance :

For the Petitioner/s : Sri Manoj Kumar
For the Respondent/s : A.C. to G.P. - 7

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

3 25-09-2019 Heard Sri Manoj Kumar, learned counsel for the
petitioner and learned A.C. to Government Pleader No. 7.

The petitioner, claiming to be registered owner of
Hero Honda Passion Pro motorcycle bearing Registration No.
BR-08D0381, Chasis No. MBLHA10EWCGD42360, Engine
No. HA10EDCGD09548 had earlier filed a criminal writ
petition *vide* Cr.W.J.C. No. 2923 of 2018. Subsequently, on
11.06.2019 while criminal writ petition was taken up, a request
was made by learned counsel for the petitioner to convert the
said criminal writ petition into civil writ petition. The
permission was granted and thereafter, the criminal writ petition
was converted to civil writ petition and as such, the present writ



petition is before us.

The petitioner, by way of invoking writ jurisdiction of this court under Article 226 of the Constitution of India has prayed for directing the respondents to release his motorcycle i.e. *Hero Honda Passion Pro* motorcycle bearing Registration No. BR-08D0381, Chasis No. MBLHA10EWCGD42360, Engine No. HA10EDCGD09548, which has been seized in connection with Piri Bazar P.S. Case No. 105 of 2017, registered for the offence under Section 30(a)(d)/ 32 (1) (3) /37 (d) , 38 (1) (2) of the Bihar Prohibition And Excise Act, 2016 [hereinafter referred to as 'Bihar Excise Act'].

It was submitted by learned counsel for the petitioner that his motorcycle was parked outside a *dhaba* where Police party conducted a raid and from the *Dhaba* recovery of 1 ½ liters of *Mahua* country made liquor was shown. At the same time, two motorcycles, among them one was of the petitioner, which were parked outside *Dhaba* were seized. Learned counsel for the petitioner by way of referring to Section 56 (b) of the Bihar Excise Act submits that it is not a case of the prosecution that his vehicle was being used for carrying or transporting liquor or intoxicant, and as such, the vehicle may not be confiscated. Learned counsel for the petitioner has also referred



to a Division Bench judgment of this court passed in C.W.J.C. No. 13162 of 2018 (Rajesh Kumar Pandit @ Rajesh Pandit Vs. The State of Bihar & Ors.) and submits that this issue has already been set at rest. Accordingly, a prayer has been made for directing the respondents to immediately release his vehicle.

Learned State Counsel opposing the prayer for release of the vehicle by way of referring to the facts disclosed in the counter affidavit submits that writ petition is liable to be rejected. It has been argued that after seizure of the motorcycle a recommendation has already been made by the Superintendent of Police, Lakhisarai to the District Collector, Lakhisarai for initiating confiscation proceeding vide letter no. 3745 /CR dated 10.09.2018 [annexure – A/1 to the counter affidavit] however on being asked he did not reply as to whether confiscation proceeding has been initiated or not.

Besides hearing learned counsel for the parties, we have also perused material available on record. On perusal of the F.I.R. itself it is evident that it was not a case of the Department that the motorcycle of the petitioner was used for carrying or transporting liquor and as such, in view of Division Bench judgment of this court, it is not liable to be confiscated under Section 56(b) of the Bihar Excise Act.



We are also of the opinion that in view non recovery of any liquor from the motorcycle and the fact that it was found parked outside *Dhaba* from where recovery of little quantity i.e. 1 ½ liter *Mahua* liquor was shown to be recovered and also it was not a case that the seized motorcycle was being used to carry or transport liquor, there was no reason to seize the vehicle.

We are of opinion that in a case in which vehicles are not liable to be confiscated, in the garb of provisions contained in Bihar Excise Act, the respondents should refrain from taking any action in respect of seizure of such vehicles.

In number of cases we have noticed that vehicles have been seized, in cases in which persons in drunken condition were found in the vehicle without recovery of any quantity of liquor from the vehicles and without an allegation that the said vehicle was being used for carrying or transporting liquor under the provision of Bihar Prohibition and Excise Act, 2016.

The Chief Secretary, Government of Bihar is directed to issue specific instruction to different authorities so that, in future, unnecessarily without any case of confiscation of the vehicles, no vehicles be seized.



In view of facts and circumstances, the present writ petition is allowed with a direction to the authority concerned to release the seized vehicle of the petitioner i.e. *Hero Honda Passion Pro* motorcycle bearing Registration No. BR-08D0381 , Chasis No. MBLHA10EWCGD42360, Engine No. HA10EDCGD09548 forthwith only on production of original documents relating to vehicle by the registered owner.

The writ petition stands allowed.

Let a copy of this order be communicated to the Chief Secretary , Government of Bihar for its compliance.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

praful/-

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