**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.13547 of 2019**

======================================================

1. Dileep Saw @ Dilip Saw, Son of Reshami Saw @ Laxman Saw, Resident of Village- Fatehpur, P.S. Raushanganj, District-Gaya.
2. Sanjay Mahto, Son of late Jagdish Mahto, Resident of Village- Chapri, P.S.Imamganj, District- Gaya.

... ... Petitioners.

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise , Govt. of Bihar, Patna.
2. The Principal Secretary Department of Excise, Govt. of Bihar, Patna.
3. The District Magistrate-Cum-Collector, Aurangabad, Bihar.
4. The Superintendent of Police, Aurangabad, Bihar.
5. The District Transport Officer, Aurangabad, Bihar.
6. The Officer-in-Charge, Madanpur Police Station, District Aurangabad, Bihar.

... ... Respondents.

======================================================

**Appearance :**
For the Petitioner/s : Mrs.Sanjana, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP-7

======================================================

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**
**and**
**HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)**

3 02-12-2019 Heard learned counsel for the petitioner and learned AC to GP-7.

The present writ application has been preferred for a direction to the District Magistrate -cum- Collector, Aurangabad to release Hero Honda Splendor Plus Motorcycle of the petitioner bearing Registration No. BR-01AN-9434 which has been seized in connection with Madanpur P.S. Case No. 118 of

2017 registered under Section 30(a) of Bihar Prohibition and Excise Act, 2016. Relief prayed for in paragraph 1 of the writ application reads as follows:

> "That this writ petition is being filed for issuance of a direction to the respondent no. 3 the District Magistrate -Cum- Collector, Aurangabad for release of vehicle Motorcycle Hero Honda Splendor Plus bearing Registration No. BR-01AN-9434 which has been seized in connection with Madanpur P.S. Case No. 118 of 2017 under the Excise Act.
>
> Further it is for grant of any other relief for which the petitioners may be found entitled to in the facts and circumstances of the case."

The factual matrix of the case is that Madanpur P.S. Case No. 118 of 2017 was registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act'). The prosecution case got initiated on the basis of self recorded statement of S.I. Subhash Roy, SHO Madanpur Police Station on 25.05.2017 at 4.00 A.M., to the effect that on secret information that liquor is being carried on a motorcycle, one Hero Honda Splendor Plus bearing Registration No. BR-01AN-9434 was intercepted, on which one container kept between the driver and pillion rider, was being carried. They disclosed their name as petitioners and from the container kept on the motorcycle, 5 litres of Mahua liquor was recovered. Consequently, it appears that upon seizure Superintendent of Police, Aurangabad recommended for confiscation of the motorcycle and consequently, Confiscation Case No. 270 of 2017 was registered. It appears from the order dated 18.09.2017, as contained in Annexure-3, that the motorcycle of the petitioner has been confiscated since the Collector came to the conclusion that the liquor was carried on motorcycle.

Learned counsel for the petitioners submits that the motorcycle in question is jointly registered in the name of the petitioners and merely on the basis of suspicion the motorcycle has been seized. Hence, prayer has been made for release of the motorcycle.

Learned counsel for the State submits that the final order in confiscation proceeding has been passed and the Hero Honda motorcycle in question has already been confiscated and against the final order of confiscation, appeal lies under Section 92 of the Act and petitioners have not challenged the order of the confiscation.

Having heard learned counsels for the parties, we are of the considered view that the present application for release of the motorcycle is absolutely not maintainable because the motorcycle in question has already been confiscated and hence, the property vests in the State. In view of the present order of confiscation, the petitioners no longer remain the owner of the vehicle in question so they cannot claim release of the same. Section 61 of the reads as under:-

> **"Confiscated articles to vest with the Collector**.-When an order for confiscation of any property has been passed under Section 58 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest with the State Government free from any encumbrance."

The aforesaid provision clearly suggests that once the confiscation order becomes final passed under Section 58 of the Act, the property shall vests with the State. There is nothing on record to suggest that the order of the Collector was challenged.

Chapter IX of the Act deals with the provisions of 'Appeals' and 'Revision'. Section 92 of the Act stipulates the provision of appeal. Section 92(1) of the Act stipulates that all final orders passed by any Excise Officer other than the Excise Commissioner or Collector under the Act, shall be appealable to the Collector within sixty days from the date of the order whereas Section 92(2) of the Act stipulates that all final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government, respectively, within ninety days from the date of the order complained of.

In the present case, the impugned order suggests that the Collector has come to a definite finding that the offfence under the Act has been committed by the use of motorcycle in question. Section 92 under Chapter IX of the Act clearly stipulates that appeal lies against the order of the Collector before the Excise Commissioner within ninety days.

The Supreme Court in the case of Commissioner of Income Tax and Ors. Vs. Chhabil Dass Agarwal reported in (2014) 1 Supreme Court Cases 603, where assessment order under the Income Tax Act was challenged in a writ application, has held that the discretion under Article 226 of the Constitution of India should not be exercised when alternative efficacious remedy is available to the petitioner. Paragraph nos. 15 and 16 read as follows:

> "15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in

> total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.
>
> 16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

In the circumstances, since efficacious alternative remedy is available to the petitioners, we are not inclined to interfere in the matter.

Accordingly, the writ application is disposed of with a liberty to the petitioner to prefer appeal within a period of four weeks before the appellate authority when the appellate authority is expected to decide the appeal expeditiously, considering to condone the delay in view of the fact that the writ application was pending before this Court.

It is made clear that we have not expressed any opinion with regard to the merit of the case.

**(Dinesh Kumar Singh, J)**

**(Anil Kumar Sinha, J)**

DKS/-

| | | | |
|---|---|---|---|
| **U** | | | |