

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15032 of 2019

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Shabul Alam (male), aged about 27 years, son of Md. Samim Alam, Resident of Village + P.O.- Dulampur, P.S. -Chakai, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate, Madhepura.
3. The Superintendent of Police, Madhepura.
4. The Officer-Incharge of Gwalapara, P.S. Gwalapara, District- Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prakash Mahto
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 SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 19-12-2019

Heard learned counsel for the petitioner and learned AC
to Government Pleader No. 7.

The present writ application has been filed for quashing of the notice dated 10.04.2019 issued by In-charge Officer, Legal Cell, Madhepura whereby notice has been issued intimating the petitioner with regard to initiation of the Confiscation Case No. 26 of 2019 for confiscation of Bolero Pick Up Van bearing Chasis No. MA1ZN2TBKJ1G61548, Engine No. TBJ1G68356 which has been seized in connection with Gawalpara P.S. Case No. 01 of 2019 registered for the offences punishable under Section 30(a) of the



Bihar Prohibition And Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (herein after referred to as 'the Act'). A prayer has also been made to release the vehicle in question and stay the further proceeding of the confiscation case.

Relief as claimed for by the petitioner as stipulated in paragraph no. 1 of the writ petition, reads as follows:---

“1. That, the petitioner seeks indulgence to the Hon'ble for issuance of an appropriate writ especially writ of certiorari to quash the notice dated 10.04.2019 issued by In-charge Officer Law Madhepura for confiscation vide confiscation case no. 26 / 2019 registered in court of Collector – cum-District Magistrate Madhepura and further to pass order[s] and direction[s] to the respondents – Authority to release the Bolero pick- up Vehicle unregistered white colored of the petitioner bearing Chasis No. M.A.I.Z.N. 2T.B.J.K.J.I. 61548 and Engine No. T.B.J.I.G.68356 of Mahindra Company which has been seized in connection with Gwalapara P.S. Case No. 01 of 2019 for offence under Section 30[a] of the Bihar Excise Act, 2016 and further be pleased to stay the further proceedings during pendency of this petition.”

It is admitted position that on recovery of 291.78 liters of Indian made foreign liquor from the Bolero Pick Up vehicle



without Registration No., Gwalapara P.S. Case No. 01 of 2019 was registered.

A counter affidavit has been filed on behalf of the respondents wherein the final order dated 13.08.2019 passed in Excise Confiscation Case No. 26 of 2019 as contained in Annexure -D to the counter affidavit has been brought on record which suggests that the vehicle in question has been confiscated and the Superintendent, Excise, Madhepura has been directed to get the minimum value fixed through the Motor Vehicle Inspector, Madhepura and the auction sale be made to the highest bidder and if the petitioner participates, then he will be given preference, if he pays the highest bid amount.

It is submitted by learned counsel for the petitioner that he was not aware about the passing of the final order under Section 58 of the Act.

It appears from the order passed by the learned Collector that the petitioner appeared through his lawyer initially, but at the stage of final hearing, the lawyer failed to appear.

Learned counsel for the respondent -State submits that there is provision of appeal against the final order passed under Section 58 of the Act as envisaged under Section 92(2) of the Act,



hence the petitioner has alternative efficacious remedy available to him.

Having heard learned counsel for the parties, we are of the considered view that the discretionary jurisdiction under Article 226 of the Constitution of India, subject to 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 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 bar 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.”

Under Section 92(2) of Chapter IX of the Act there is provision of appeal and revision. Section 92(2) of the Act stipulates that all final order passed by the Collector is appealable before the Excise Commissioner within a period of ninety days from the date of order complained of.

In these circumstances, we are not inclined to give any further indulgence in the matter. Since under the provision of Section 61 of the Act confiscated items after the final order being passed under Section 58 of the Act vests with the State Government, hence, the claim of the petitioner has become infructuous.

Accordingly, we give liberty to the petitioner to file appeal before the appellate authority along with an application for



condonation of delay within a period of four weeks. It is expected from the appellate authority to consider the application filed for condonation of delay keeping in view the fact that writ application was pending before this court. The appellate authority is expected to dispose of the appeal within a period of six weeks thereafter, if such appeal is filed.

We, however, make it clear that we have not expressed any opinion on the merits of the case.

The counter affidavit filed on behalf of the respondents does not stipulate that confiscated vehicle in question has actually been auctioned or not. If it has not been auction sold till date, then it shall not be put on auction sale till the conclusion of the appeal.

The writ application is disposed of accordingly.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06-01-2020
Transmission Date	NA

