

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15265 of 2019

=====

Santosh Kumar @ Santosh Singh @ Bablu Singh Son of Ramesh Singh,
Resident of Naini, P.O. and P.S.- Chappra Mufassil, District- Saran, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise Department,
Government of Bihar.
2. The District Magistrate-cum-Collectorate, Saran.
3. The Superintendent of Police, Saran.
4. The Station House Officer, Police Station, Jalalpur, Saran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Sayed Imran Ghani
For the Respondent/s : Mr.Vikash Kumar (Sc11)

=====

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

Date : 09-12-2019

Heard Mr. Amrit, learned counsel for the petitioner and
learned A.C. to S.C.-11 for the State.

The present writ application has been filed for a
direction to the respondent authorities for release of Tata Sumo
Gold Ex 9STR vehicle, bearing Registration No. BR31PA-0335
seized in connection with Jalalpur P.S. Case No.183 of 2018,
registered for the offences punishable under Sections 413, 414/34
of the Indian Penal Code and Section 30(a) of Bihar Prohibition
and Excise Act, 2016.



The relief, as prayed for by the petitioner in paragraph No.1 of the writ application reads as follows :-

“(A) For issuance of appropriate writ(s) order (s), direction(s) in the nature of mandamus directing and commanding the respondent -authorities to release the vehicle Tata Sumo gold EX 9STR, bearing registration No. BR31PA-0335, in favour of the petitioner / owner, which is seized in connection with Jalalpur P.S. Case No.183 of 2018 in District-Saran registered under Section 413, 414/34 of the Indian Penal code and Section 30(a) of Bihar Prohibition and Excise Act, 2016.

(b) Any other relief(s) for which the petitioner is found entitled to.”

The prosecution case got initiated on the basis of written report of Assistant Sub-Inspector of Police, Bhikhari Ram, submitted to the S.H.O. Jalalpur P.S. is to the effect that on 14.09.2018 at about 11.00 A.M., the informant along with other police personnel proceeded to conduct raid and at about 12.30 P.M., the senior officer informed the informant that in the house of Praduman Mishra, stolen pick up van has been parked, whereupon, the house of Praduman Mishra was raided and a pick up van bearing Registration No.BR-01-GB-6648 was found parked but no document was produced in relation to the said vehicle. From the other vehicle, i.e., Sumo Gold bearing Registration No.BR-31 PA-0335, four litres of Indian Made Foreign Liquor were recovered



and upon enquiry, Praduman Mishra stated that Babloo @ Santosh Kumar (petitioner) used to keep stolen vehicle in his courtyard. Consequently, the Jalalpur P.S. Case No.183 of 2018 was registered with an offence punishable under Sections 413, 414/34 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act, 2016.

The counter affidavit filed on behalf of the respondent No.2 duly sworn by Sanjeev Kumar Thakur, Excise Superintendent, Chapra, Saran, suggests that the proposal for confiscating both of the seized vehicles were transmitted by the Superintendent of Police, Saran vide letter No.3113 dated 22.09.2018 and consequently confiscation case was initiated vide Confiscation Case No.826 of 2018. Despite notices being issued and despite the substituted service of notice through publication in the two local newspaper, the owner of none of the vehicles appeared. Hence, ultimately both the vehicles were confiscated vide order dated 19.06.2019 passed by the Collector, Saran at Chapra in Confiscation Case No.826 of 2018 and Superintendent, Excise, Chapra was directed to auction both the vehicles and deposit the consideration amount in district treasury.

It is submitted by learned counsel for the petitioner that vehicle in question is not stolen one and valid registration



document in the name of petitioner has been brought on record as Annexure-2, which suggests that the petitioner is a *bona fide* owner of the Tata Sumo Gold vehicle. The recommendation for initiation of confiscation proceeding has not been made by the seizing authority, moreover it has been made with inordinate delay contrary to the provisions of Section 58 of the Bihar Prohibition and Excise Act.

Learned counsel appearing for the respondent-State submits that though the final order has been passed in confiscation proceeding but the vehicle in question has not been auctioned till date, hence the petitioner is at liberty to prefer Appeal under Section 92 (2) of the Act within the further stipulated time permitted by this Court.

Considering the rival submissions of the parties and on consideration of Chapter IX of the Bihar Prohibition and Exercise Act, 2016 (hereinafter referred to as 'the Act) stipulates the provisions of Appeals and Revision, it emerges that Section 92(2) of the Act stipulates that all final orders passed by the Collector or 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 final order in confiscation proceeding has been



passed by the Collector, Saran, hence the petitioner can prefer Appeal before the Excise Commissioner.

The Supreme Court while considering the proposition laid down by two Constitution Benches in case of **A.V. Venkateswaran, Collector of Customs v. Ram Chand Subhraj Wadhvani**, reported in (AIR 1961 SC 1506) and case of **Calcutta Discount Co. Ltd. v. ITO, companies District**, reported in AIR 1961 SC 372 held in case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others**, reported in (1998) 8 SCC 1 that in exercise of jurisdiction conferred under Article 226 of the Constitution of India, to entertain or not entertain such writ jurisdiction is subject to self imposed restriction and one of those is availability of alternate remedy. However, existence of such alternate remedy does not operate as a bar in exercise the writ jurisdiction. Such jurisdiction may be exercised in any of the following contingencies;

- (i) Where the writ petition has been filed for enforcement of fundamental rights, or
- (ii) Where there is violation of principle of natural justice; or
- (iii) Where the order or proceedings are followed without jurisdiction; or



(iv) Where the vires of the Act is under challenge.

Paragraph No.15 of the Judgment 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 High 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 phethora 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, in view of the above discussion, the writ application is disposed of with a liberty to the petitioner to prefer appeal within a period of four weeks from the date of receipt of a copy of this order along with an application for condoning the delay before the appellate authority when the appellate authority is expected to decide the appeal expeditiously preferably within a



period of ten weeks of its filing after giving due opportunity of hearing to the affected parties, in accordance with law.

Let the learned appellate authority consider the prayer of condonation of delay in view of the fact that the writ application was pending before this Court.

It is made clear that in view of the specific statement in paragraph 9 of the counter affidavit filed on behalf of respondent No.2 to the effect that the vehicle has not been auctioned till date, the same will not be auctioned till conclusion of the Appeal, if it is so filed.

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

Accordingly, this writ petition is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	19/12/2019
Transmission Date	

