

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17004 of 2019

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Akash, S/o Bir Singh, Resident of Village Khandsa, P.S.- Sector 37, Dist. Gurugram, Haryana

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Patna
2. The District Magistrate cum Collector, Gopalganj
3. The Superintendent of Police, Gopalganj.
4. The S.H.O. Bishambharpur Police Station, Dist. Gopalganj.
5. The Investigation Officer of Bishambarpur, P.S. Case No.49/2018, Bishambharpur Police Station Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Dubey, Adv.
For the Respondent/s : Mr. Kumar Manish (SC-5)

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

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 16-12-2019 The present writ application has been filed for quashing the order dated 26.07.2018, as contained in Annexure-4, passed by learned Additional Sessions Judge-II-cum-Special Judge, Gopalganj in Bishambharpur P.S. Case No. 49 of 2018, whereby the petitioner's prayer for release of beat gray coloured car bearing Registration No. HR26CL4513 has been rejected on the ground that since confiscation proceeding has been initiated, the Court has no jurisdiction to release the same.

The prosecution case got initiated with recovery of 34.560 litres of Indian Made Foreign Liquor from the vehicle in



question.

It is submitted by learned counsel for the petitioner that the vehicle in question was stolen from the native place of the petitioner situated at Village Khandasa, within the District Gurugram, Sector-37, Haryana on 21.04.2018 and consequently, FIR No. 0099, dated 24.04.2018 was registered under Section 379 and 504 of the Indian Penal Code against one Avinash Upadhyay. The said FIR is still under investigation and two days after the theft, the vehicle in question was seized. It is further submitted that the petitioner prays for disposal of the present writ application to raise all the grievances before the Confiscating Authority.

Since admittedly the confiscation proceeding has been initiated, we are not inclined to interfere.

Considering the fact that the vehicle in question was stolen and for that, a substantive FIR was registered at Gurugram two days prior to the seizing of the vehicle in question and the petitioner was not caught on the spot when the vehicle in question was seized, in our view, the Collector, Gopalganj has to examine the issue with regard to the fact that the presumption of possession of liquor under Section 32 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to



as ‘the Act’) can be drawn against the petitioner or against the person or vehicle who was carrying the liquor. There is nothing on record to suggest that the issue, with regard to the fact that the vehicle was liable for confiscation under Section 56 of the Act has to be decided as a preliminary issue as directed by a Division Bench of this Court in the case of Diwakar Kumar and Ors. Vs. the State of Bihar, reported in 2018(3) PLJR 403, has been decided by the Collector.

In the circumstances, the petitioner is permitted to file an appropriate application before Confiscating Authority bringing all the factual detail to the notice of Confiscating Authority.

It will be imperative on the part of appellate authority to decide the entire issue in accordance with law preferably within a period of ten weeks of filing of such application.

Accordingly, with the observations and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Amrendra/-

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