

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15474 of 2019

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Kailash Prasad Yadav S/o Sri Mahendra Prasad Yadav, resident of Village- Mahadevkitta, P.O.- Dharmodih, Police Station- Mahgama, District- Godda (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
3. The Collector-cum District Magistrate, Banka.
4. The Superintendent of Police, Banka.
5. The Officer-in-charge, Banka, P.S., District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Mukherjee
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 : 20-12-2019

Heard learned counsel for the petitioner and learned
counsel for the respondent.

The present writ application has been filed for release of Scorpio vehicle bearing Registration No.JH-11C-5555, in favour of petitioner, which has been seized in connection with Banka (Barahat) P.S. Case No.66 of 2018, registered for the offences punishable under Sections 30(a) (g) and 32(2) of Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').



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

“1. That the present writ application is being filed for issuance of an appropriate writs, orders, directions for the following reliefs :-

(i) For a direction upon the respondents, particularly respondent No.3 to 5 to release the Scorpio Reg. No.JH11C-5555, Chasis No.MA1TA2BFC52C66667 & Engine No.BD54A10062 in favour of the petitioner which was seized in connection with Banka (Barahat) P.S. Case No.66 of 2018 registered under Sections 30(a)(g) and 32(2) of Bihar Prohibition & Excise Act, 2016.

(ii) Any other relief / reliefs as the petitioner may found entitled by this Hon'ble Court be given.”

Prosecution case as per the written report of Mahendra Prasad, Asstt. Sub Inspector of Police Barahat P.S. submitted to S.H.O. Barahat P.S. is to the effect that on 28.01.2018 at 7:30 P.M. secret information was received that the liquor is being transported from the Scorpio vehicle. Consequently, Scorpio vehicle was intercepted and from the vehicle in question, 90 litres of Indian Made Foreign Liquor were recovered and thereupon the vehicle was seized and seizure list was prepared, which led to registration of Banka (Barahat) P.S. Case No.66 of 2018, under Sections 30(a)(g) and 32(2) of Bihar Prohibition & Excise Act, 2016.

A counter affidavit dated 14.10.2019 has been filed on behalf of Respondent No.4 stipulating in para-9 that confiscation



(Prohibition) Case No.44/ 18-19 has already been initiated on 7.8.2018 against the seized Scorpio vehicle bearing No.-JH-11C-5555 and in reply to the same, learned counsel for the petitioner submits that the writ application was registered on 29.07.2019 and the matter was taken up on 25.10.2019 and on the prayer of learned counsel for the petitioner, the matter was adjourned for 20th December, 2019. However, counter affidavit does not suggest that why the confiscation proceeding has not been concluded till date when it was initiated on 17.08.2018.

Having heard learned counsel for the parties, we are of the view that once the confiscation proceeding has been initiated then the Courts should not interfere in the matter, as has been held by the Apex Court in the case of **The State of Madhya Pradesh Vs. Uday Singh Cr. Appeal No.524 of 2019 (Special Leave Petition (Crl) No.2001 of 2012)** and in view of the bar under Section 60 of the Act, the Special Judge has no jurisdiction to direct for the release of the vehicle. However, such a bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India, since such power is required to be exercised in exceptional circumstances, such as where the writ has been filed for enforcement of fundamental rights or where there has been violation of principle of natural justice or where the impugned



order or proceedings are wholly without jurisdiction or whole vires of the Act is challenged.

Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129**, a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970**, held in paragraph no.62 to 66 as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified



inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice



occurs because of non-fulfillment of the conditions for confiscation.”

In such circumstances, we are not inclined to interfere in to the matter. However, the counter affidavit does not suggest as to under what circumstances, the confiscation proceeding which was initiated on 07.08.2019, has not been concluded as yet.

In such circumstances, it is expected from the Collector, Banka to conclude the confiscation proceeding aforesaid and dispose of the matter by a reasoned and speaking order within a period of 45 days from the date of receipt / production of a copy of this order.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Needless to say that if the confiscation proceeding in question is not concluded within the specified time frame, then this Court will be constrained to consider the release of the vehicle.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09/01/2020
Transmission Date	NA

