

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17714 of 2019

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Neel Kamal @ Neelkamal Son of Anant Prasad Yadav@ Anant Yadav,
Resident of Village- Shishwa Muraho, Ward No. 8, P.O. Muraho, P.S.
Madhepura(Bhararahi O.P.), District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The District Magistrate, Madhepura.
3. The District Superintendent of Police, Madhepura.
4. The S.H.O. Singheshwar, District- Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anant Kumar 1
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 ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 17-12-2019 Heard learned counsel for the petitioner and the respondents.

Through the present writ application, the petitioner has prayed for quashing the order dated 03.12.2018, passed by the Collector, Madhepura, in Excise Confiscation Case No. 97 of 2018 whereby the Hero Splender Pro-DRS motorcycle of the petitioner, bearing Registration No. BR-43E-6549, has been confiscated. Relief prayed for in paragraph 1 of the writ application reads as follows:

“1. That this application is being filed



for quashing order dated 03.12.2018 passed in Excise Confiscation Case No.97 of 2018 (State vs. Ranvijay Kumar), under Excise Act by District Magistrate, Madhepura and further to release of one Hero Splender pro-DRS motorcycle, bearing Registration No. BR-43E-6549, which belongs to the petitioner and has been seized in connection with Singheshwar Police Station Case No. 80 of 2018 dated 19.03.2018 offences 30(a) Bihar Prohibition and Excise Act, 2016.”

The prosecution case got initiated on the basis of self-statement of Officer-in-charge, Singheshwar Police Station, is to the effect that on 19.03.2018 at 08:40 PM, one person was driving the motorcycle bearing Registration No. BR-43E-6549, having tied one carton on the back side of the motorcycle in question and when the police tried to stop the motorcycle, the person driving the motorcycle tried to flee away, but on chase, he was apprehended by the police and on search, 48 bottles of Indian Made Foreign Liquor was recovered from the carton and hence, the seizure was made under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as ‘the Act’).

It is submitted by learned counsel for the petitioner that only on the basis of suspicion, the motorcycle in question



has been confiscated and it has not been auctioned till date.

Learned counsel for the State submits that the final order in confiscation proceeding has been passed and the motorcycle in question has already been confiscated and against the final order of confiscation, appeal lies under Section 92 of the Act. Hence, we are of the view that the order has been passed by the Collector in consonance to the provision under Section 58(2) of the Act.

Considering the fact that the final order has been passed in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal in Chapter IX under Section 92(2) of the Act against the order passed by the Collector before the Excise Commissioner within ninety days of the order complained of, this Court is not inclined to interfere in the matter.

It is well settled that the discretionary jurisdiction under Article 226 of the Constitution of India being a 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 challenged. The



Apex Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others**, reported in **(1998) 8 SCC 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 bare 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.”

Accordingly, this writ application is disposed of with a liberty to the petitioner to prefer appeal within a period of four weeks along with an application for condonation of delay. If such appeal is filed by the petitioner, the appellate authority is



expected to consider application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a period of ten weeks from the date of its filing.

Needless to say, in case the vehicle in question has not been auction sold till date, it will not be put on auction sale till the disposal of appeal before the appellate authority, if so filed.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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