

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2169 of 2019

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Vijay Kumar Choudhary @ Vijay Choudhary S/o Late Ram Krishna Choudhary , R/o village Raghunathpur Police station Nokha district Rohtas at Sasaram

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Registration Excise and Prohibition Department Government of Bihar Patna
2. The District Magistrate cum Confiscation Officer Rohtas at Sasaram Bihar
3. The Superintendent of police Rohtas at Sasaram Rohtas at Sasaram
4. The Station House Officer Nokha Police Station District Rohtas at Sasaram

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghunandan Kumar Singh, Adv.
For the Respondent/s : Mr. Kumar Manish, SC5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 15-03-2019

Heard Mr. Raghunandan Prasad Singh, learned counsel for the petitioner and Mr. Kumar Pankaj A.C. to S.C.5 for the State.

The petitioner is aggrieved by the order dated 22.06.2017 passed by the District Magistrate, Rohtas cum Confiscating Officer, Rohtas whereby the motorcycle (Hero Passion Pro) of the petitioner bearing Registration No. BR-24J-8807 has been confiscated for alleged offences punishable under the prohibition of Excise Act, 2016. The recovery is of 20 pouches



each containing 200ml. of country liquor.

When this matter came up for consideration on 06.02.2019, Mr. Singh learned counsel for the petitioner while submitting that the order is ex parte invited the attention of this Court to the confiscation order to submit that even when the show cause was submitted by the petitioner only on 16.12.2017 vide Annexure-4 that the confiscation order which was passed on 22.06.2017 has taken notice of the same which apparently shows that the order is ante dated. It is bearing note of such glaring default that the Collector was put on notice to explain as to how he had taken note of a show cause reply in his order dated 22.06.2017 which show cause reply was filed by the petitioner only on 16.12.2017.

A counter affidavit was filed by the Superintendent of Police enclosing a recommendation of the Investigating Officer at Annexure- R/3 /F for initiation of a confiscation proceeding which is dated 31.12.2018. The counter affidavit filed on behalf of the District Magistrate cum Collector, Rohtas accepts the default under the refuge of inadvertent error. In fact Annexure- A to the counter affidavit of the District Magistrate cum Collector, Rohtas filed through the District Panchayat Officer encloses recommendation of the Superintendent of



Police, Rohtas for initiation of a confiscation case arising from Nokha P.S. Case No. 46 of 2017 which is the foundation for the present proceedings and which recommendation is dated 15.07.2017 i.e almost a month later than the order passed in the confiscation case. In other words even before the Superintendent of Police recommended for initiation of confiscation case that a final order has already been passed by the District Magistrate cum Collector, Rohtas. This is a glaring reflection of the mechanical manner in which the Confiscating Authorities are disposing of the confiscation case (s).

Since the default has been accepted, we issue a warning to all District Magistrate(s) acting as Confiscating authorities under the Bihar Prohibition and Excise Act,2016 to be careful while passing such orders and not be mechanical in discharge lest we proceed for imposing damages for such mechanical discharge.

Let this order be brought to the notice of the Chief Secretary for issuing appropriate directions to the Confiscating authorities for it would not be long before we start imposing damages in favour of the alleged violators and perhaps that would not be in the interest of the State.

Records also transpire that vide order passed on



18.01.2018 in C.W.J.C. No.953 of 2018, a division bench presided by Hon'ble the Chief Justice had directed for provisional release subject to outcome of the confiscation case. However, since confiscation order already had been passed on 22.06.2017 the relief granted by this Court eluded the petitioner.

Be that as it may, having considered the matter in the backdrop explained above, for the present, we quash the order dated 22.06.2017 passed in Confiscation Case No. 49 of 2017 in so far as the vehicle of the petitioner bearing Registration No. No. BR-24J-8807 is concerned and accordingly direct the District Magistrate cum Collector, Rohtas to release the vehicle provisionally in favour of the petitioner on production of ownership and registration with respect to vehicle in question in his name before the District Magistrate, Rohtas with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document. The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:

(i) That the vehicle in question has never been involved in any offence of similar nature in past and shall not indulge in similar offence in further.

(ii) That the petitioner shall not indulge in creating



any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release of the vehicle, a Panchanama would be prepared by the District Magistrate cum Collector, Rohtas wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama in course of trial.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above. This release would however, be subject to fresh orders to be passed in the confiscation proceeding.

With the observations above, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.04.2019
Transmission Date	NA

