

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17181 of 2019

Ajay Kumar, S/o Lakhan Sardar, Resident of Ward No.12, Chatgaun, PO
Pratappur, P.S. Triveniganj, Dist.Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar,Patna.
2. The Collector, Supaul.
3. The Superintendent of Police, Supaul, Dist. - Supaul.
4. The Office-in-Charge (SHO), Triveniganj Police Station,Dist.- Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Veena Kumari Jaiswal, Adv.
For the Respondent/s : Mr.Vikash Kumar, SC-11

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 16-12-2019

Heard learned counsel for the petitioner and the
respondents.

Through the present writ application, the petitioner
has prayed for quashing the order dated 29.06.2019, passed by



the Collector, Supaul, in Excise Case No. 317 of 2019 whereby the Bajaj (Pulsar) Motorcycle of the petitioner bearing Registration No. BR-50H-5376 has been confiscated. Relief prayed for in paragraph 1 of the writ application reads as follows:

“1. That this petition is being filed on behalf of the petitioner for issuance of an appropriate writ(s)/order(s)/direction(s) commanding the respondents as well as for quashing of order dated 29.06.2019 passed by the Confiscating Authority, the Collector, Supaul passed in Excise Case No.317 of 2019 arising out of Triveniganj P.S. Case No. 395 of 2018 by which the learned Collector ordered to confiscate the Pulsar Motor Cycle belonging to the petitioner being its registration No. BR-50H-5376, Chesis No. MD2A11CY47HRE1562 and Engine No.DH4RHEO1910 and to sale in auction and to release the said motorcycle in favour of the petitioner, which has been seized by Triveniganj Police in Triveniganj P.S. Case No. 395 of 2018 dated 10.10.2018 under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and also under Sections 504, 506, 354 of Indian Penal Code.”

The prosecution case got initiated on the basis of written report of Lakshman Sah, Sub-Inspector of Police



submitted to the S.H.O.- Triveniganj, Supaul, to the effect that on 09.10.2018 at 4.30 A.M, one person was driving the motorcycle bearing Registration No. BR50H5346 in an inebriated condition and allegedly he not only abused few women but also attempted to drag an old woman. The old woman was saved by the other women and the person who was driving the vehicle escaped from the scene after leaving the vehicle. Subsequently, some persons came and tried to take the vehicle forcefully and on protest being made, they started abusing. Subsequently, on search being made, from the dickey of the vehicle in question, one litre of illicit liquor was recovered 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 Ors., reported in (1998) 8 Supreme Court Cases 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)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NIL
Uploading Date	20.12.2019
Transmission Date	NIL

