

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18322 of 2019

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Dinesh Ray, Aged about 49 years, Male, Son of Charitar Roy, Resident of Mohalla- Road No. 1 Near Pani Tanki, Rajendra Nagar, Patna, P.S. Kadamkuan, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Prohibition and Excise, Government of Bihar, Old Secretariat, Bailey Road, Patna.
2. The District Magistrate, Samastipur.
3. The Superintendent of Police, Samastipur.
4. The Excise Superintendent, Samastipur.
5. The SHO, Tajpur P.S., Samastipur.
6. A.D.J. 2nd cum Special Judge Excise, Samastipur.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Anshu Dhar Sharma
For the Respondent/s : Mr. Kumar Manish (Sc5)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

2. 16-12-2019 Heard learned counsel appearing for applicant-petitioner as well as learned counsel for the State.

The applicant has filed this writ application for issuance of writ of mandamus directing the respondents to release Tata Ace delivery van, bearing registration no. BR01GD-6022, in favour of the applicant, who claims himself to be owner of the said vehicle.

The aforesaid vehicle was seized in connection with Tajpur (Halai O.P.) P.S. Case No. 384 of 2018 registered under



Sections 272/273 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act, 2016, while it was detected that illicit liquor was being carried by the aforesaid vehicle. After seizure of the aforesaid vehicle, the concerned police officer sent a proposal for initiation of confiscation proceeding.

The applicant filed a petition for release of the aforesaid vehicle before the learned Addl. Sessions Judge-II cum Special Judge, Excise, Samastipur, which was rejected on 07-08-2019 by the learned Addl. Sessions Judge-II cum Special Judge, Excise, Samastipur on the ground that since the proposal for confiscation of aforesaid vehicle has already been sent, there is no scope to release the aforesaid vehicle.

Section 58 of Bihar Prohibition and Excise Act, 2016 gives power to District Collector to initiate confiscation proceeding in respect of any article including vehicle, if it is found that the aforesaid article including vehicle has been used in carrying illicit liquor against the provision of Bihar Prohibition and Excise Act, 2016.

In the present case, it is obvious that the seizing authority has already sent proposal for initiation of confiscation proceeding in respect of the above-stated vehicle, but there is nothing on the record to show as to whether the confiscation



proceeding in respect of the aforesaid seized vehicle has been initiated as yet or not.

Learned counsel appearing for applicant refers decision of *Diwakar Kumar Singh vs. State of Bihar through Principal Secretary, Excise Department and Others*, reported in **2018 (3) PLJR 403** and submits that Division Bench of this Court released the seized vehicle, even the aforesaid vehicle was seized in connection with Excise Act.

But, from perusal of the aforesaid judgment, we find that the facts and circumstances of the aforesaid case was quite different from the present case. In the above-stated case, the occupants of the vehicle were found in drunken state and no liquor was being carried by the seized vehicle, but in the present case, the vehicle in question was used for carrying the liquor against the provision of Bihar Prohibition and Excise Act, 2016.

Moreover, we have already noticed that there is nothing on the record to show that the confiscation proceeding in respect of the seized vehicle has been initiated or not and thereafter, in the aforesaid circumstance, we dispose of this writ petition with direction to the learned Additional Sessions Judge II cum Special Judge, Excise, Samastipur to obtain a report from the District Collector, Samastipur to this effect as to whether



confiscation proceeding in respect of above-stated seized vehicle has been initiated or not. If the confiscation proceeding in respect of the seized vehicle has not been initiated as yet, in that event, the learned court below shall release the aforesaid vehicle in favour of the applicant after taking bond of Rs. 4,00,000/- (four lacs) and after verifying the original documents, but if the learned Addl. Sessions Judge finds from the report of District Collector, Samastipur that confiscation proceeding has already been initiated, the above-stated seized vehicle shall not be released in favour of the applicant. However, if the vehicle in question is not released in favour of the applicant by the learned Additional Sessions Judge due to initiation of the confiscation proceeding and the applicant moves before the District Collector, Samastipur for release of the vehicle in his favour, this order shall not prejudice the District Collector, Samastipur and the District Collector, Samastipur shall be at liberty to pass appropriate order in accordance with law.

(Hemant Kumar Srivastava, J.)

(Prabhat Kumar Singh, J.)

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