

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11366 of 2018

In
Criminal Writ Jurisdiction Case No.573 of 2018

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Shashi Shekhar Kumar @ Angad Yadav Son of Bindeshwari Yadav @
Sipahi Yadav, resident of Village- Kari Mandal Tola, Jankinagar, Police
Station- Jankinagar, District- Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate-cum Collector, Purnea.
3. The Excise Superintendent, Purnea.
4. The Superintendent of Police, Purnea.
5. The Officer-in-Charge of Dagarua Police Station, District- Purnea.
6. Sri Rajnish Kant Son of Shyama Kant Lal, Area Legal Manager, Tata
Motors Finance Limited Company, District Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Viveka Nand Singh, Adv.
For the Respondent/s : Mr. Vikash Kumar -Sc11

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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 : 01-04-2019

Heard learned counsel for the parties.

This writ petition is filed for provisional release of
the vehicle (Tata Safari Car) bearing registration No. BR-11V-
7904 which was seized in connection with Dagarua P.S. Case
No. 92 of 2016 registered for the offences punishable under
the provisions of Bihar Prohibition and Excise Act, 2016



(hereinafter referred to as 'the Act') as well as the provisions of the Indian Penal Code.

The petitioner while praying for release of the vehicle in question has also questioned the order dated 28.07.2017 passed by the Confiscating Authority i.e. the District Magistrate -cum- Collector, Purnea in Excise Case No. 28 of 2017 whereby the vehicle has been confiscated in exercise of powers vested to the Authority under the provisions of 58(2) of 'the Act', a copy of the order impugned is enclosed as Annexure-3 to the writ petition.

The short submission made by Mr. Vivekanand Singh, learned counsel appearing for the petitioner to question the confiscation order is that it is directed against the financing company and not the petitioner who is the registered owner of the vehicle in question. He further informs that as per the seizure list 9 litres of IMFL have been recovered from the vehicle in question.

Taking note of such submission that the State was directed to seek instructions and file counter affidavit which has since been filed and does not dispute the position, this Court had made a query as to whether, in the meantime, the vehicle has been auction sold but it is informed vide



paragraph-6 of the counter affidavit that vehicle in question has not been auction sold as yet.

In such circumstances and since the order of confiscation insofar as the vehicle (Tata Safari Car) bearing registration No. BR-11V-7904 is passed against the financing company and not the registered owner i.e. the petitioner, we hold the confiscation order dated 28.07.2017 passed in Excise Case No. 28 of 2017, which is put to question, illegal and accordingly, direct the Confiscating Authority to release the vehicle albeit provisionally in favour of the petitioner on production of ownership and registration with respect to vehicle in question in his name before the Collector-cum-District Magistrate, Purnea 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 future:

(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 got prepared by the Collector-cum- District Magistrate, Purnea 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 final order passed in the confiscation proceeding.

In result, the confiscation order dated 28.07.2017 passed by the District Magistrate -cum- Collector, Purnea in Excise Case No. 28 of 2017 to the extent it relates to vehicle bearing registration No. BR-11V-7904, is, hereby, quashed.

The writ petition is allowed.



This order, however, would not preclude the District Magistrate -cum- Collector, Purnea to pass a fresh order in accordance with law.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	11.04.2019
Transmission Date	

