

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2522 of 2018

In
Civil Writ Jurisdiction Case No.2168 of 2018

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Lalan Choudhary @ Lalan Kumar Chaudhary, son of Jagdish Choudhary,
Resident of Village- Darhar, P.S. Bahadurpur Laheriasarai, District
Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Aditya Kumar Das, son of not known, Excise Department, Government of Bihar, Patna.
2. Dr. Chandreshekhar Singh, son of name not known, the DistrictMagistrate, Darbhanga.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kaushalesh Chudhary, Advocate
Mr. Shambhu Nath Jha, Advocate
For the Opposite Party/s : Mr. Mritunjay Kumar, AC to AAG-6

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 20-02-2019 Heard Shri Kaushalesh Chaudhary, learned counsel

for the applicant and Shri Mritunjay Kumar, AC to AAG-6, for

the State of Bihar.

A Division Bench vide order dated 13th of February,
2018 directed release of the vehicle of the applicant which is a
motorcycle that had been confiscated under the provisions of
Bihar Prohibition and Excise Act, 2016. The Division Bench



while passing the order made it conditional to the effect that the vehicle shall be released “if not already auctioned”.

The applicant has filed his application contending that the respondents have acted in violation of the order dated 13th February, 2018, there being willful disobedience not only of this order but also of the consequential order passed by the Collector on 09th March, 2018 releasing the said vehicle in favour of the applicant.

A show cause has been filed and in Paragraph-4 it has been stated that the vehicle came to be confiscated on 29.11.2017 and it was put to auction on 06th February, 2018 even prior to the order of the High Court dated dated 13th February, 2018.

From the facts on record, we find that the order of the Collector dated 09th March, 2018 does not record any information about any such auction and it appears that the said order came to be passed by the Collector in compliance of the order of the High Court without even calling for the report with regard to status of the confiscation of the vehicle.

Learned counsel for the applicant submits that the auction should have been carried out after providing a reasonable opportunity as provided for under Section 36 of the



Bihar & Orrisa Public Demands Recovery Act, 1914.

Learned counsel for the applicant submits that the procedure having been violated, the auction dated 06th February, 2018 is vitiated and, therefore, it amounts to disobedience of the directions of this Court.

Having considered the submissions raised, we find that the factum of auction has been stated by the respondents to have taken place on 06th February, 2018. This fact was neither known to the Division Bench when the directions were issued on 13th February, 2018 nor does this fact appear to have been in the knowledge of the Collector when he passed the order on 09th March, 2018. The show cause does mention about the preparation of the documents of confiscation and auction, but no such documents have been filed along with the show cause.

We, in the above circumstances, find that there is no willful or deliberate disobedience, but at the same time, this does not take away the rights of the applicant to challenge the auction proceedings if there is any violation of the statutory provision, for this the applicant shall be supplied copy of the documents pertaining to confiscation as well as auction within two weeks from today so that the applicant may avail of the remedy for challenging such proceedings before the appropriate



forum.

With the aforesaid observations, the application is
consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

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