IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2285 of 2018

Arising Out of PS. Case No.-61 Year-2018 Thana- SAHIYARA District- Sitamarhi

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Sanjay Kumar son of Shiv Shankar Prasad resident of village - Maker, Police Station - Maker, District – Saran.

... ... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The Superintendent of Police, Sitamarhi.
5. The SHO, Sahiyara Police Station, Sitamarhi.
6. The Superintendent of Police, Chapra Saran.
7. The SHO, Maker Police Station, Chapra Saran.
8. The District Transport Officer, Chapra Saran.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ankur Prakash Sinha, Adv.
		Mr. Rajeev Ranjan, Adv.
For the Respondent/s	:	Ms Nutan Sharma, A.C. to GA-1

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 09-04-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for release of his Mahindra Bolero Pick-up van bearing registration no. WB-19-F-3614 seized in connection with Sahiyara P.S. Case No. 61 of 2018 instituted under Sections 272 and 273 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'Excise Act, 2016').

3. Learned counsel for the petitioner submitted that the petitioner is not concerned in any manner with the alleged occurrence giving rise to Sahiyara P.S. Case No. 61 of 2018. He is the registered owner of Mahindra Bolero Pick-up van bearing registration no. BR-04-M-4996, which was stolen for which an FIR vide Maker P.S.Case No. 183 of 2017 dated 28.11.2017 was instituted by the driver of the vehicle, namely, Munna Kumar stating therein that on 27.11.2017, at about 9.30 p.m., he had parked the said vehicle in front of his house and went to sleep. When he woke up, at 4.00 a.m., he did not find the pick-up van at the place where it was parked. Thereafter, he made inquiry and searched nearby places, but the vehicle in question could not be located. In course of investigation, the Investigating Officer also could not locate the vehicle.

4. He submitted that on completion of investigation, the Investigating Officer filed report under Section 173(2) of the Code of Criminal Procedure (for short 'Cr.P.C') before the court holding the case to be true but without clue. Subsequently, the petitioner came to know that the said vehicle was seized by the police in connection with Sahiyara P.S. Case No.61 of 2018. When he made further inquiry, he came to know that the vehicle in question was seized by the police on the charge of transporting Nepali liquor.

5. He submitted that continued seizure of the van in question is resulting into undue hardship to the petitioner. The petitioner is himself a victim of an offence. As a matter of fact, it was a failure on the part of the State that his van was stolen and inspite of a report to the police, it could not be recovered. Though, the case instituted by the petitioner was found true, neither the perpetrator of the crime nor the van could be located.

6. Lastly, he contended that the petitioner had applied for insurance claim on the basis of final report in Maker P.S. Case No. 183 of 2017 but during the pendency of his claim the vehicle was recovered in Sahiyara P.S Case No. No. 61 of 2018. Hence, the payment of insurance claim has not been made by the insurance company.

7. In view of the submission made above, learned counsel for the petitioner submitted that in order to secure the ends of justice, the respondents be directed to release the vehicle to the petitioner.

8. A counter affidavit has been filed by the State on behalf of respondent no. 4. The relevant paras 8 to 10 of the counter affidavit read as under:-

> "8. That the deponent states that in course of patrolling duty, information was received that a four-wheeler is coming from Nepal carrying

liquor in it and is on way to Sitamarhi. At about 3:30 AM on 01.04.2018 a four-wheeler Bolero Pickup bearing Registration No. WB-19F 3614 was seen coming and watching the police van near village Sheetalpatti Math, the driver/owner of the vehicle fled away taking advantage of darkness in the nigh and left the vehicle on spot.

Thereafter, on search of the vehicle in question, 7320 bottles of 300ML total 2196 litre Nepali Liquor was found on it and accordingly recovered in presence of two independent witnesses. The liquor was then seized and the seizure list was accordingly prepared in presence of the witnesses.

Accordingly, a criminal case as Sahiyara P.S. Case No. 61/2018 dated 01.04.2018 was registered under Sections 272/273 of Indian Penal Code and 30 (a) of the 2016 Act 2016.

9. That it is stated that pursuant to the institution of the F.I.R and in view of recovery of huge quantity of illicit liquor from the vehicle in question, a proposal for confiscation of the vehicle in question has been forwarded vide Letter No. 614 dated 03.04.2018 to the District Magistrate, Sitamarhi.

10. That it is further submitted that after institution of criminal case it transpired

during investigation of the case that the real registration number of the seized vehicle is BR-04-M-4996 and its owner is Sanjay Kumar, resident of village- Maker, P.S.: Maker, District: Saran, The owner, Sanjay Kumar during investigation disclosed that his vehicle was stolen by unknown persons on 27.11.2017 and regarding that occurrence a F.I.R bearing Maker P.S. Case No. 183/17 under Section 379 IPC was registered. It is stated that in the said case, final form has been submitted stating that the case is found to be true having no clue."

9. Learned counsel for the State conceded that as far as the petitioner is concerned, no evidence showing his complicity or culpability in connection with Sahiyara P.S. Case no. 61 of 2018 has come. He also conceded that in course of investigation it has been established that the petitioner is the registered owner of the vehicle in question.

10. Since the pick-up van in question has been seized in connection with a case under the Excise Act, it would be pertinent to take into account the relevant provisions of the Excise Act, 2016.

11. Section 13 of the Excise Act, 2016 provides for complete prohibition of liquor or intoxicants. It reads as under :-

> “**13. Prohibition of liquor or intoxicants.**— No person shall manufacture, bottle, distribute, transport, collect, store, possess, purchase, sell or consume any intoxicant or liquor; Provided that the State Government may, by notification, allow renewal of the existing licensees for manufacturing, blending, compounding, bottling, storage, import and export of any liquor or intoxicant subject to the provisions of this Act.”

12. The word intoxicant has been defined under Section 2(40) of the Excise Act, 2016. It reads as under :-

> “**2(40) “intoxicant”** means –
> (i) liquor, or
> (ii) Spirit including silent spirit or ENA, or
> (iii) Methyl Alcohol, or
> (iv) Ethanol, whether denatured or not; or
> (v) any substance from which the liquor may be distilled and which is declared by the State Government by notification in the official Gazette to be an intoxicant for the purpose of this Act, or
> (vi) intoxicating drug, or
> (vii) medicinal preparation as defined under Medicinal and Toilet Preparations (Excise Duties) Acts, 1955 or
> (viii) any preparation or ingredient, either medicinal or otherwise, whether solid, semi

> solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated."

13. Similarly, liquor has been defined under Section 2(44) of the Excise Act, 2016, which reads as under :-

> "**2(44) "Liquor**" means country or traditional liquor, Indian Made Foreign Liquor, foreign liquor orany preparation or ingredient, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated."

14. Under Section 14 of the Excise Act, 2016, there is restriction of movement of intoxicant etc. It reads as under :-

> "**14. Movement of Intoxicants etc**.— (1) No liquor, intoxicant or final product shall be imported, exported or transported or transited within or from outside or through the State except with a valid permit and subject to such duty (if any) payable;
> (2) If any consignment of liquor or intoxicants is being transported by road from a place outside the State of Bihar to another such place and the vehicle carrying the consignment

> passes through the territory of the State, the driver or any other person in-charge of the vehicle shall obtain transit permission in the prescribed manner from the authority of the first check post falling enroute after entry into the State and shall surrender the same transit permission to the authority of the last check-post before leaving the State and in the event of failure to do so within the stipulated hours of leaving the first check-post falling enroute, it shall be deemed that liquor or intoxicants so transported have been sold or disposed off by the owner or the person-in-charge of the vehicle within the State of Bihar.
>
> (3) In case the driver or person referred to in sub-section (2) fails to comply with the provisions of sub-section (2), he may, apart from being levied such penalty as the State Government may decide, also be prosecuted under section 30 of this Act;
>
> (4) The State Government may make detailed rules for this purpose."

15. From a reading of the aforesaid provisions prescribed under Section 14 of the Excise Act, 2016, it would be manifest that violation of Section 14 is an offence and the State Government can prosecute the offender under Section 30 of the Excise Act, 2016 as also levy penalty.

16. Section 30 of the Excise Act, 2016 provides that unlawful import, export, transport, manufacture, possession, sale, etc. would be punishable. It reads as under :-

> "**30. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.**—Whoever, in contravention of provision of this Act or of any rule or order made or notification issued under this Act or in contravention of any condition of any license or permit or pass, renewed under this Act or without a valid license, permit or pass issued under this Act -
>
> (a) manufactures, possesses, buys, sells, distributes, collects, bottles, imports, exports, transports or removes any intoxicant or liquor; or
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> (b) cultivates any hemp plant; or
>
> (c) constructs or establishes or works any manufactory, distillery, brewery or warehouse; or
>
> (d) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, or premises, whatsoever, for the purpose of manufacturing any intoxicant or liquor
>
> Explanation – The word "material" means any material,and includes any food or non food item, that may be used for preparing any liquor or intoxicant.
>
> (e) possesses any material or film either with or without the State Government logo or logo of any State or wrapper or any other thing in which liquor or intoxicant can be packed or any apparatus or implement or machine for the purpose of packing any liquor or intoxicant; or

(f) removes any liquor or intoxicant from any distillery, brewery, warehouse, other place of storage licensed, established, authorized or continued under this Act; or

(g) manufactures, possesses, sells, distributes, bottles, imports, exports, transports or removes, any preparation or ingredient made with or without the use of any intoxicant or liquor, which can serve as an alcohol or a substitute for alcohol and is used or likely to be used or consumed for the purposes of getting intoxicated, shall be punishable with imprisonment for a term not less than ten years but which may extend to imprisonment for life and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

Explanation: -"Possession" here means the possession by any family or member of that family and includes the knowledge of possession where any member of a family or the family itself know that such possession is illegal, whether it is in his or her own possession or with some other member of the family."

17. Section 56 of the Excise Act, 2016 provides for confiscation of the things. It reads as under :-

"**56. Things liable for confiscation**.—Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely-

(a) any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause (a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause (b), is found, and the other contents, if any, of such receptacle, package or covering;

(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act."

18. Under Section 57 of the Excise Act, 2016, the Collector of the district has been empowered to pass an order for sale or destruction of articles even before confiscation of the articles, which is liable to speedy natural decay.

19. Under Section 58 of the Excise Act, 2016, the Collector of the district is the competent authority to confiscate anything liable for confiscation. It reads as under :-

"**58. Confiscation by District Collector.**—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act isseized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under subsection (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property orany part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation."

20. Under Section 61 of the Excise Act, 2016, upon an order of confiscation, the confiscated article vests with the State Government free from any encumbrances.

21. The very object of confiscation of any conveyance used in committing an offence under the Excise Act, 2016 is to achieve, enforce, implement and promote complete prohibition of liquor and intoxicants in the territory of the State of Bihar and for matters connected therewith or incidental thereto.

22. As seen above, Section 56 of the Excise Act provides that any vehicle used for carrying prohibited intoxicant or liquor shall be liable for confiscation. The power of confiscation has been vested with the Collector under Section 58 of the Excise Act.

23. Section 61 of the Excise Act provides that when an order for confiscation of any property has been passed under Section 58, such order shall become final and the property shall vest with the State Government free from any encumbrance.

24. Having seen the relevant provision of the Excise Act, 2016, now the question before this Court is that when culpability of the petitioner is not found in commission of the offence under the Excise Act, 2016 in any manner so far and the petitioner himself is a victim of a crime, would it be proper to allow the vehicle in question to be detained further so that the same may be turned into a junk.

25. Admittedly, the pick-up van of the petitioner was stolen. A police case was registered in this regard. The police could not recover the stolen vehicle in course of investigation. Some unknown miscreant used the said vehicle for transportation of prohibited liquor after tampering with the registration number, engine number and chasis number. The said vehicle was intercepted by the police used as conveyance for carrying liquor. The police have taken steps for confiscation of the vehicle. The confiscation proceeding has yet not started. The petitioner has not even been noticed.

26. Under the circumstances, this court is of the opinion that the vehicle can not be allowed to be reduced to be a junk during the pendency of confiscation proceeding. It would be a travesty of justice if the court would refuse release of the vehicle to a victim of an offence of theft of property.

27. It would have been a different story altogether if the petitioner would have pretended that his vehicle has been stolen and he himself would have used the same as a conveyance for carrying liquor. However, present case is not of that nature.

28. In that view of the matter the Collector, Sitamarhi is directed to release the Mahindra Pick-up Van bearing Registration No. WB-19-F-3614(original No. BR-04-M-4996) seized in connection with Sahiyara P.S. Case No. 61 of 2018 subject to the following conditions :

(i) That the petitioner shall furnish bank guarantee of Rs. 5 lacs to the satisfaction of the Collector;

(ii) That the petitioner shall execute a bond for the return of the said vehicle if required by the Collector or the court in connection with Sahiyara P.S. Case No. 61 of 2018 or Maker P.S. Case No. 183 of 2017;

(iii) That the petitioner shall also give an undertaking on oath that he shall not alter or part with the ownership of the vehicle during pendency of the trial in the aforesaid two criminal cases and the confiscation proceeding.

29. With the aforesaid observation and directions, the application stands allowed.

30. Let a copy of the order be sent to the Collector, Sitamarhi forthwith.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	N.A
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