IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23312 of 2019

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Vijay Kumar, Son of Munsi Yadav, resident of Village- Lohdi, P.S. Ariyari, District- Sheikhpura.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise, Govt. of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate-cum-Collector, Jamui, P.S. and District- Jamui.
4. The Superintendent of Police Jamui, P.S. and District- Jamui.
5. The Superintendent of Excise, Jamui, P.S. and District- Jamui.
6. The Circle Officer Chandramandi P.S.- Jamui, District- Jamui.
7. The S.H.O. Chandramandi P.S., District- Jamui.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Umesh Prasad, Adv.
For the Respondent/s : Mr.Vikash Kumar,SC-11

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 02-12-2019

Heard Mr. Mritunjay Kumar, learned counsel for the petitioner and Mr. Vikash Kumar, learned SC-11 for the respondents.

The present writ application has been preferred for quashing of the order dated 19.07.2019, passed by the Respondent No. 3, the District Magistrate-cum-Collector, Jamui, in Confiscation Case No. 46 of 2017, whereby, Glamour motorcycle, of the petitioner, bearing Registration No. JH 21F7863, Chasis No. MBLJAS018H9E 03109, Engine No. JA06EGH9E02933, which was seized in connection with Chandramandi P.S. Case No. 51 of 2017 registered under Section 30(a) of the Bihar Prohibition and Excise, Act, 2016(hereinafter referred to as the 'Act') has been confiscated.

The factual matrix of the case based on the written report of A.S.I. of police, Chandra Prakash Mahto, submitted to the Officer In-charge, Chakmandi Police Station is to the effect that on 15.06.2017 at 06.15 P.M., in the course of patrolling and vehicle check for implementing prohibition policy of the State Government, one red colour motorcycle was intercepted near Ashana turn and from the dickey of the motorcycle, one 750 ml bottle of Royal Stag and one 375 ml bottle of Royal Stag, which was half empty, were recovered. The petitioner was apprehended from the place of seizure and on being asked, he failed to produce any paper with regard to the vehicle in question, leading to registration of Chandramandi P.S. Case No. 51 of 2017 under Section 30(a) of the Bihar Prohibition and Excise, Act, 2016.

It appears that subsequently, the petitioner preferred criminal writ, being Cr. W. J.C. No.120 of 2018 on 17.02.2018 for release of the vehicle, which was directed to be released by the learned single Judge in following terms :-

> "In the facts and circumstances, pending initiation or finalization of the confiscation proceeding, let the vehicle of the petitioner be provisionally released on production of proof of ownership and registration of the vehicle in his favour subject to the following conditions:-
>
> (i) Petitioner shall furnish surety bond of Rs.60,000/- (sixty thousand) (not in form of bank guarantee or cash) with two sureties of the like amount to the satisfaction of court below or the authority concerned.
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> (ii) The petitioner shall also give an undertaking that he will not deal with the vehicle in question and shall not alienate or encumber the same creating any kind of adverse interest against the interest of the State, he will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the competent court/authority.
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> (iii) At the time of release, the concerned authority/court shall get prepared a photograph duly certified in presence of the petitioner and panchnama of the vehicle in question shall also be prepared and keep the same on record which may be used as secondary evidence.
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> (iv) Petitioner undertakes not to challenge the said photograph and panchnama so prepared in his presence at the time of release of vehicle in question for use in course of trial or the confiscation proceeding, as the case may be.

The above quoted part of the order clearly suggests that at the time of release of vehicle, the proof with regard to registration of vehicle was to be produced. But it appears from the impugned order that after passing of the order for release of the motorcycle, the petitioner failed to appear in Confiscation Case No. 46 of 2017, in the proceedings dated 18.07.2018, 18.08.2018, 05.10.2018, 23.11.2018, 04.01.2019, 22.02.2019 and 03.05.2019. Thereafter, vide order dated 03.05.2019, the matter was adjourned stipulating therein that if the petitioner fail to appear on the next date, the matter will be decided ex parte. Despite this, the petitioner failed to appear and make submissions against the confiscation of this vehicle. Consequently, *ex parte* vide order dated 19.07.2019, passed in Confiscation Case No. 46 of 2017, the Collector, Jamui directed to seize the motorcycle of the petitioner once again and confiscated the motorcycle of the petitioner and directed the S.H.O., Chandramandi to seize the motorcycle of the petitioner in question. Superintendent of Excise, Jamui was directed to began the process of auction for sale of the seized motorcycle in question.

It is an admitted position that the motorcycle in question has not been surrendered till date before the authority concerned.

It is submitted by learned counsel for the petitioner that notice was never issued to the petitioner in confiscation proceeding. However, there is no pleading to that effect in the writ application.

Mr. Vikash Kumar, learned SC-11 submits that from the impugned order it appears that initially the petitioner appeared in the confiscation proceeding but after passing of the order for release of his vehicle in question, the petitioner chose not to appear and it was only under such circumstance that the ex parte order was passed, whereby, the motorcycle of the petitioner was directed to be seized again and confiscated.

Considering the rival submissions of the parties, we are of the view that from the FIR it appears that he failed to produce any document with regard to ownership of the vehicle in question. However, since it appears from the material on record that the vehicle was directed to be released by this Court on verification of the ownership, hence, it can be presumed that the release must have been done after verification of the ownership of the vehicle in question.

The Supreme Court in the case of Commissioner of Income Tax and Ors. Vs. Chhabil Dass Agarwal reported in

(2014) 1 Supreme Court Cases 603, where an assessment order under. The Income Tax Act was challenged under Article 226 of The Constitution of India, has held that the discretion under Article 226 of the Constitution of India should not be exercised when an alternative efficacious remedy is available to the petitioner. Paragraph nos. 15 and 16 read as follows:

> "15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.
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> 16. In the instant case, the Act provides complete

> machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assesses could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

Chapter IX of the Act deals with the provisions of 'Appeal' and 'Revision'. Section 92 of the Act stipulates the provision of appeal. Section 92(1) of the Act stipulates that all final orders passed by any Excise Officer other than the Excise Commissioner or Collector under the Act, shall be appealable to the Collector within sixty days from the date of the order, whereas Section 92(2) of the Act stipulates that all final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government, respectively, within ninety days from the date of the order complained of.

In the present case, the impugned order suggests that the Collector has come to a definite finding that the offence under the Act has been committed through the motorcycle in question. Section 92 under Chapter IX of the Act clearly stipulates that appeal lies against the order of the Collector before the Excise Commissioner within ninety days.

In the circumstances, since efficacious alternative remedy is available to the petitioner, we are not inclined to interfere in the matter.

Accordingly, we direct the petitioner to surrender the motorcycle in question within a period of two weeks from today before the Officer In-charge Chandramandi P.S., whereupon, the petitioner will at liberty to prefer an appeal before the appropriate authority within next two weeks of surrender of the vehicle in question. The appellate authority is expected to decide the appeal within a period of eight weeks on its filing, in accordance with law, considering to condone the delay in view of the fact that the writ application was pending before this Court.

It is also expected from the appropriate authority that if the auction sale of the motorcycle in question has not been given effect to, the same shall not be given effect to till disposal of appeal, if so filed.

It is made clear that if the petitioner fails to surrender the vehicle in question before the appropriate authority within the stipulated period stated above, then the concerned authority would be at liberty to take all coercive action against the petitioner in accordance with the procedure established by law.

Accordingly, with the above observation and direction, the writ application stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

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