

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23348 of 2019

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Bhavishan Kapar aged about 70 years, Male, Son of Jitan Kapar Resident of Ward No.11, Faruha Bhawani, Piparahi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Patna, Bihar.
2. The District Magistrate, Sitamarhi.
3. The Superintendent, Department of Excise, Sitamarhi.
4. The Officer in Charge -Excise Office Sitamarhi- II.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anil Kumar
For the Respondent/s : Mr.Kumar Manish (SC5)

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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 : 20-12-2019

Heard learned counsel for the petitioner and learned AC to SC-5.

The present writ application has been filed for release of Hero HF Deluxe motorcycle bearing Registration No. BR30R3490, which has been seized in connection with Excise Case being G.O. Case No. 82 of 2019, registered for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018 [hereinafter referred to as ‘the Act’].



The relief prayed for by the petitioner has been stipulated in paragraph no. -1 of the writ application, which reads as follows:-

“That through the present writ petition the petitioner begs kind indulgence of the Hon’ble Court for following reliefs:-

(i) For issuance of an appropriate writ commanding and directing the respondent authorities to release the motorcycle of the petitioner under brand / name as HERO HF DELUXE bearing Registration No. BR30R3490, Chassis No. MBLHAR056H4D01380 , the said motorcycle has been seized by the B-COY 51st BN SSB SITAMARHI and handed over to the In-charge EXCISE OFFICE SITAMARHI – II in connection with GO Case No. 82 / 19 for the alleged offence registered u/s 30(A) Bihar Prohibition and Excise Act 2016 which is presently pending in the court of learned Addl. Sessions Judge -II cum Special Judge Excise Act, Sitamarhi, in favour of the petitioner by handing it over to him or his representative.

(ii) For issuance of any other relief / reliefs which the petitioner may found entitled in the facts and circumstances of the present case in favour of the petitioner.”



The prosecution case got initiated on the basis of complaint of Birendra Kumar, Inspector (Prohibition), Sitamarhi on seizure of 18 liters Nepali Soufi liquor.

It is submitted by learned counsel for the petitioner that petitioner is the registered owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record as Anenxure -2 Series to the petition. A statement has been made in paragraph no. 13 of the petition that till date no notice has been issued under Section 58(3) of the Act from the court of learned Collector, Sitamarhi, which suggests that the confiscation proceeding has not been initiated till date. However, learned AC to Standing Counsel No. – 5 submits that on the basis of instruction received today a proceeding for confiscating the vehicle in question has a been initiated being Confiscation Case No. 781 of 2019.

In these circumstances, learned counsel for the petitioner in alternative prays for disposal of the present writ application with a direction to the confiscating authority to conclude the confiscation proceeding within a fixed time frame.

Considering the prayer of the learned counsel for the petitioner and settled view that interference in confiscation proceeding by the court can be entertained only in monstrous



situation as has been held by the Full Bench. However, such a bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India but such power has to be exercised in a monstrous situation. Considering the view taken by the Apex Court in the case of State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129, a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the



Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. *Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the*



plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”



In view of the above, let the Collector, Sitamarhi conclude the proceeding of Confiscation Case No. 781 of 2019 within a period of forty five days from the date of receipt / production of a copy of the order, in accordance with law, after giving due opportunity of hearing to all the affected persons.

In case of non - conclusion of the confiscation proceeding without any fault on the part of the petitioner, he will be at liberty to renew his prayer for release of the vehicle in question.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06-01-2020
Transmission Date	NA

