

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24248 of 2019

=====

Kusum Devi W/o Ranjan Yadav R/o Digha Ghat Bans Kothi, Near gate No.
93 Dinapur-cum- Khagaul, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Collector Patna.
3. The Superintendent of Police Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Alok Kumar Jha
For the Respondent/s : Mr.Vivek Prasad (G P 7)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 12-12-2019

Heard learned counsels for the parties.

The present writ application has been filed for release of Apache Motorcycle bearing Registration number BR 01 CY 3243 seized in connection with Patliputra P.S. Case No. 273 of 2018, registered under Sections 37(a),(b) and (c) of Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act'), as well as Sections 323,341 and 504/34 of the Indian Penal Code.

The factual matrix of the case is that the



prosecution case got initiated on the written report of Abhishek Kumar submitted to the SHO, Patliputra Police Station to the effect that on 4.7.2018 at 7.45 P.M., the informant was abused by some motorcyclists. On protest being made, the motorcyclists assaulted the informant and his friends. In the meantime, the police patrolling vehicle reached and enquired about the incident and consequently, two persons, namely, Yugesh Kumar alias Yogi and Kundan Kumar were found to be in drunken condition and were taken to the police station and after breath analyzer test, it was found that they had consumed liquor, leading to registration of Patliputra P.S. Case No. 273 of 2018.

It is submitted by learned counsel for the petitioner that the petitioner is the owner of the vehicle in question and the certificate of registration has been brought on record as Annexure 2. This is admitted position that no recovery of liquor or intoxicant was made from the vehicle in question or from the petitioner or the pillion rider. The vehicle is rotting under the open sky. It is further submitted that since there is no recovery and the vehicle has not been used for carrying liquor or intoxicant, hence it is not liable for confiscation under the provisions of Section 56 of the Act. Moreover, from bare perusal



of the FIR, it appears that for a dispute between two persons, on the written report of Abhishek Kumar, maliciously a case has been registered under the provisions of the Act as well as the IPC.

Learned AC to GP 7 submits that this is an admitted position that no intoxicant or liquor has been seized from the motorcycle in question and the same has not been used for carrying the same. Hence, prima facie, it is not liable for confiscation. Hence, learned counsel for the respondents has no objection with regard to the provisional release of the motorcycle in question.

However, learned counsel for the respondents has also relied upon the judgment in the case of Diwakar Kumar Singh Vs. The State of Bihar and Ors., 2018 (3) PLJR 403, wherein it has been held that it shall be mandatory for the confiscating authority, before passing an order on confiscation proceeding when the person is found in drunken condition and no liquor is seized nor the vehicle is used for transportation of the liquor, to decide it as a preliminary issue whether in such a condition the vehicle is liable for confiscation under Section 56 of the Act. The said order was to be communicated to all the District Magistrates through the office of the Advocate General.



Having heard learned counsels for the parties, this is not in dispute that no recovery of liquor or intoxicant from the vehicle in question has been made. This is also not a case that the liquor was being carried through the vehicle in question. The FIR was lodged, seizure has been made by ASI of Police Shyamdeo Rai whereas Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be *de hors* the provisions of the Act. Though Section 73 of the Act does not stipulate a pre-condition for seizure but there must be some foundational background, that is to say, enough suspicion that the offence has been committed, to seize the vehicle in question, which is lacking in the present case.

This is an admitted position that the confiscation proceeding has not been initiated. Statement to that effect has been made in paragraph 11 of the petition which reads as follows:

“That the petitioner has no information as to commencement of any confiscation case by the concerned authority.”

However, learned counsel for the respondent has no instruction with regard to the initiation of confiscation



proceeding. Even if the authority choose to initiate such proceeding then they have to comply the mandatory direction given in the case of Diwakar Kumar Singh (supra).

Since there is a bar under Section 60 of the Act for any court to pass any order with regard to the seized vehicle, the Special Judge has no jurisdiction to release the vehicle. However, this bar under Section 60 of the Act will not apply in exercise of the jurisdiction under Article 226 of the Constitution of India. Hence, in such a circumstance, the case comes within one of the exceptions where the discretionary jurisdiction under Article 226 of the Constitution of Indian can be exercised for releasing the vehicle seized, as incorporated in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1. Paragraph 15 reads as follows”

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not



to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing to rot, ultimately resulting into waste of public money has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* (2010) 6 Supreme Court Cases 768.

Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle, we direct that the same be released provisionally till the conclusion of the



trial or conclusion of confiscation proceeding, if any, on the following conditions:

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs.50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the Special Court concerned or the confiscation authority, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;



(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

The entire exercise will be done by the Special Judge within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is allowed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

anil/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

