

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24303 of 2019

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Damnati Devi W/o RAmji Paswan, Resident of Mohalla- Sidhighat, Rustampur Gali, Ranipur Milki Chak, P.S.- Chowk, Patna City, District- Patna at present residing at Village- Banstar, P.S.- Nidi, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector-cum- District Magistrate, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Superintendent of Police, Rural, Patna.
5. The Excise Superintendent, Patna.
6. The Officer-in-Charge, Salimpur Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ajit Ranjan Kumar
		Mr. Harendra Kumar Singh
For the Respondent/s	:	Mr.Kumar Manish (S.C. 5)
		Mr. Madan Mohan, Advocate, A.C. to S.C.-5.

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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 : 25-09-2020

Heard learned counsel for the petitioner and learned A.C.
to S.C.-5 for the respondent.

The present writ application has been filed for a direction to release the Swaraj Tractor, bearing Registration No.BR-01-GH-2779, Chasis No.MBNAG48ACJTM60078, Engine No.331008/SZM07913, which has been seized in connection with Salimpur P.S. Case No.202 of 2019, registered for the offences punishable under Sections 279,



323, 353, 504 of the Indian Penal Code, Section 185 of the Motor Vehicle Act and Sections 30(a)/37(b) (c) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred as the 'the Act').

The relief as prayed for in paragraph No.1 of the writ application reads as follows :-

“(1) That this writ application is being for commanding the respondents to release the Swaraj Tractor, bearing Registration No.BR-01-GH-2779, Chasis No.MBNAG48ACJTM60078 and Engine No.331008/SZM07913, which has been seized by the Salimpur Police in Salimpur P.S. Case No.202 of 2019, registered for the offences punishable under Sections 279, 323, 353, 504 of the Indian Penal Code, Section 185 of the Motor Vehicle Act and Sections 30(a)/37(b) (c) of the Bihar Prohibition and Excise Act.

This, writ application is also being filed for holding the aforesaid seizure of Tractor under Bihar Prohibition and Excise Act is illegal, arbitrary and without any lawful jurisdiction.

This, writ application is also being filed for any other relief / releifs as your lordship may deem fit and proper.”

Vide order dated 12.12.2019, the matter was adjourned to 17.12.2019 in order to enable the counsel for the respondent-State to file counter affidavit but the same has not been filed.

The factual matrix of the case is that the prosecution case got initiated with written report of Anil Kumar Mandal, Assistant Sub Inspector of Police, Salimpur P.S. submitted to S.H.O. Salimpur P.S. to the effect that on secret information being received on 30.10.2019,



raid was led in village Gyaspur Gangaghat, where two persons were found carrying a white sack. After seeing the police party, these two persons fled away from the scene, leaving behind the bag. However, from the bag, in question, 43 litres of countrymade liquor were seized and while the informant was returning after the seizure, then a tractor, which was being driven by the driver in negligent manner, dashed the police van and thereafter the driver tried to assault the police party. The driver of the alleged tractor was put on Breath Analyzer test which was found positive, leading to seizure of tractor and registration of Salimpur P.S. Case No.202 of 2019, for the offences punishable under Sections 279, 323, 353, 504 of the Indian Penal Code, Section 185 of the Motor Vehicle Act and Sections 30(a)/37(b) (c) of the Bihar Prohibition and Excise Act, 2016.

It is submitted by learned counsel for the petitioner that even from the written report, it appears that at best cases under Motor Vehicle Act ought to have been registered against the tractor as the tractor driver has nothing to do with the alleged recovery from another person, yet despite the fact that there was no recovery from the tractor in question, the same was seized. Hence the vehicle is not liable to be confiscated under Section 56 of the Act.

It is further submitted that it is admitted position that no liquor or intoxicating material has been seized from the vehicle in



question and only the driver was found in intoxicating condition. Even assuming the accusation, at best, case under Section 37(b) is made out and the vehicle in question, admittedly was not used for carrying intoxicating material or liquor. Hence the vehicle, in question, is not liable to be confiscated under Section 56 of the Act.

The vehicle is now under open sky and there is no likelihood of trial being concluded.

Learned A.C. to S.C-5 submits that the petitioner is the registered owner of the vehicle in question and the registration certificate has been brought on record as Annexure-3 to the writ application. It is further submitted by counsel for the respondent that no confiscation proceeding has been initiated. Learned counsel for the respondent further submitted that it is admitted position that no liquor or intoxicating material has been seized either from the driver or from the vehicle in question, however, the driver was found in intoxicated condition and in such circumstances, in view of the ratio laid down in the case of **Diwakar Kumar Singh Vs. The State of Bihar 2018 (3) PLJR 403**, he has no objection in the provisional release of the vehicle, in question.

Having heard learned counsel for the parties and after going through the materials on record, this Court is of the view, that the Act in question being very stringent act, hence in view of the ratio laid



down by the Apex court, those stringent procedure and safeguards are required to be followed very carefully. But, in the instant case, on appreciation of the provisions of the Bihar Prohibition and Excise Act, the manner of registration of FIR, it appears that the procedure for safeguard has not been followed.

Here, it would be appropriate to examine the relevant provision of the Bihar Prohibition and Excise Act, 2018. Section 73 of the Act under Chapter VIII of the Act empowers the different authorities to inspect, search and seized any place and make seizure.

Section 73 of the Act reads as follows :-

“73. Power to enter, inspect, search and seize – (1)
Any of the following officers namely :-
(a) The Excise Commissioner; or
(b) The Collector; or
(c) Any block level officer and above of the District authorized by the Collector; or
(d) Any Excise Officer; or
(e) Any police officer not below the rank of Sub Inspector; or
(f) Any other officer or agency or force armed or otherwise, authorized for this purpose by the State Government;
may, without warrant but subject to such restrictions as may be prescribed by the State government, enter, inspect, search any place at any time, day or night, and seize any document, sample, equipment, conveyance, animal, commodity, intoxicant, material, raw material or any other item of concern.”

Section 73(e) mandates that the seizure can only be made by the Excise Officers or any police officer not below the rank of Sub



Inspector or any other officer or agency or force, armed or otherwise, authorized for this purpose by the State Government;.

In the present case, the seizure has been made by ASI of Police and there is nothing on record to suggest that ASI in the State of Bihar has been authorized to make seizure, hence seizure is contrary to the provisions of Section 73 (e) and (f). In the present case, there is no suspicion with regard to commission of offence under the Act by the tractor in question.

Section 56 of the Act prescribes the conditions with regard to the things liable for confiscation. The vehicle comes under clause (d) of Section 56 of the Act which stipulates about any animal, vehicle, vessel or other conveyance used for carrying the same. In the present case, prima facie, it is admitted position that the vehicle in question was not used for carrying the liquor or not and in this context the Division Bench of this court in the case of **Diwakar Kumar Singh Vs. The State of Bihar 2018(3) PLJR 403** held that the District Magistrate in the State of Bihar, who would be mandated to pass an appropriate order in such case, shall record a positive finding where the vehicle has been confiscated under Section 56 of the Act as to whether when the petitioner is found, or the vehicle is found to be used by a person in a drunken condition and no liquor



was seized from the vehicle nor the vehicle was used for transportation or carriage of liquor.

Section 56 of the Act provides that the condition under which the seizure can be made.

Section 56 of the Act reads as follows :-

“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.

From bare perusal of the prosecution report, it does not appear that the tractor in question was used for manufacture, import, export, transport of any intoxicating material.

Section 58 of the Act elaborates the initiation and conduction of confiscation proceeding, which reads as follows :-



“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 is seized 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 pendign before any Court, order confiscation of such property;

(3) The Collector shall, before passing an order under sub-section(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 or any 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.”

Section 58 of the Act thus prescribes the procedure for initiation of confiscation where the seizing or detaining officer of any



property shall without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area. Section 58(2) mandates that 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.

On perusal of the aforesaid provisions of the Act, we find that none of the provisions has been complied or adhered to, while proceeding to conduct the confiscation proceeding. The proposal for initiating the confiscation can only be made when seizing or the detaining authority finds that such seized property is liable to be confiscated. Hence, the initiation of confiscation proceeding or transmission of report cannot be made by the seizing or detaining authority if the property so seized is not liable to be confiscated under Section 56 of the Act.

The provision of confiscation has been provided in various Acts, like, Customs Act, E.C. Act, Forest Act and Mines and Mineral (Development and Regulation) Act but in all those Acts, the confiscating authority has the jurisdiction to release the vehicle or pass interim order but in the present Act there is no such provision. Hence, in such a circumstance, the case comes within one of the



exceptions for exercise of discretionary power under Article 226 of the Constitution of India, 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 bare 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.”

Considering the fact that it is admitted position that the confiscation proceeding has not been initiated and the learned counsel for the respondents has conceded for the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial or conclusion of confiscation proceeding, if initiated in the meantime, 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 whole exercise will be done by the Special Judge within three weeks 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 the accusation 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)

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AFR/NAFR	
CAV DATE	
Uploading Date	/...../2020
Transmission Date	

