

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24254 of 2019

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Suresh Sah, Son of Ram Bachan Sah, R/o Village-Nakchhed Bahuarwa, Ward No. 15, P.S.-Pursottampur, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate, West Champaran, Bettiah.
3. The Superintendent of Excise Department, West Champaran, Bettiah.
4. The Officer in Charge, Balthar, Police Station, West Champaran, Bettiah.

... .. Respondent/s

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Appearance :

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

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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 : 12-12-2019

Heard Mr. Bimlesh Kumar Pandey, learned counsel for the petitioner, learned A.C. to G.P.-7 for the respondent.

The present writ application has been filed for release of white colour Tavera vehicle bearing Registration No.BR-01-PB-0481, Chasis No.MA6AB605DAH105696, seized in connection with Balthar P.S. Case No.29 of 2019, registered for the offence punishable under Section 279 of the IPC and Section 37(c) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

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



(a) For instance of appropriate writ commanding the respondent authorities to release the White Colour Tavera, Four Wheeler, bearing Registration No.BR-01PB-0481, Chasis No.MA6AB605DAH105696 and Engine No.3DK106434 of the petitioner which has been seized by the respondent police officials of Balthar P.S. Case No.29 of 2019 dated 31.03.2019 registered for the offences u/s 279 of I.P.C. and u/s 37 (c) of Bihar Excise and Prohibition Act, 2016 in favour of the petitioner and handing it over to the petitioner or to his representative. The case is pending in the Court of learned Special Judge Excise, Bettiah, West Champaran. The vehicle of the petitioner is lying on the police station premises.

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

The factual matrix of the case is that the prosecution case got initiated with written report of Madan Lal Gupta, Assistant Sub-Inspector of Police, Balthar P.S. submitted to S.H.O. Balthar P.S. to the effect that on 31.03.2019 at 4.30 P.M. during patrolling duty, the police personnel at about 8.30 P.M. intercepted the vehicle in question since it was being driven in rash and negligent manner. Subsequently, the informant found



the driver in intoxicated condition who disclosed his name as Nagina Sah. Thereafter, search was made and the driver was taken to preliminary health centre where the doctor found him in intoxicated condition, leading to registration of Balthar P.S. Case No.29 of 2019 for the offence punishable under Section 279 of the IPC and Section 37(c) of Bihar Prohibition and Excise Act, 2016 and the vehicle was seized by the informant

It is submitted by learned counsel for the petitioner that it is admitted position that neither any liquor or intoxicating material was seized from the vehicle in question and only the driver was found in intoxicated condition. The vehicle in question is admittedly 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.

However, confiscation proceeding has not been initiated till date. Statement to that effect has been made in paragraph No.12 of the petition which reads as follows :-

“12. That, the petitioner humbly stated and submitted that to the best of the knowledge of the petitioner no confiscation proceeding has been initiated.”

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



Learned A.C. to G.P.-7 submits 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 counsels for the parties, we are of the considered opinion that since it is an admitted position that approximately two lakh cases under the Act have been lodged in the State of Bihar, it has not only exploded the dockets of the trial court or the various authorities, i.e. the Collector of the districts who conducts the confiscation proceeding but has also paralyzed the disposal of other important cases since there is no adequate infrastructure to cope up such pendency. Several thousands of applications for release of the vehicle are pending before the High Court. From the perusal of the same, it appears that although the Act is stringent, but the procedural safeguards are not being followed either by the police, excise officials or the Collector.



It is important to quote the relevant provisions of the Act for the proper appreciation of the issue involved in the present case.

Under Chapter VI Section 30 of the Act prescribes the penalty for unlawful import, export, transport, manufacture, possession, sale, purchase, distribution of any intoxicant or liquor which reads as follows:

“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

(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 ;or

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.”

Under the same Chapter, Section 37 of the Act prescribes penalty for consumption of liquor. Section 37 of the Act has been amended by Amendment Act 8 of 2018 which reads as follows:

“37. Penalty for consumption of liquor.—

Whoever, in contravention of this Act or the rules, notification or order made thereunder -

(a) consumes liquor or intoxicant in any place; or

(b) is found drunk or in a state of drunkenness at any place; or

(c) drinks and creates nuisance or violence at any place including in his own house or premises; or

(d) permits or facilitates drunkenness or allows assembly of drunken elements in his own house or premises;
shall be punishable,

(1) in case of an offence falling under clause (a) and (b), for the first offence only with fine which shall not be less than Fifty thousand rupees or in lieu thereof sentence for a period of three months imprisonment but for subsequent offence falling under clause (a) and (b), shall be punishable with a term which shall not be less than one year but may



extend to five years and with fine, which may extend to one lakh rupees.

(2) In case of an offence falling under clause (c) and (d), with a term which shall not be less than five years but which may extend to ten years and with fine, which shall not be less than one lakh rupees which may extend to five lakh rupees.”

From conjoint reading of the Act and the Bihar Prohibition and Excise (Amendment) Act, 2018, it appears that the sentence has been drastically slashed down for the offence of consumption of liquor, stipulated under Section 37.

Under Chapter VIII, Section 73 of the Act prescribes the officers who are authorized to enter into any premises, inspect, search and make seizure without warrant subject to restrictions as prescribed by the Government. 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 82 of the Act mandates that every police officer upon any arrest, search and seizure, shall submit a report to the Collector and to the excise officers empowered under the Act within 24 hours. Section 82 of the Act reads as follows:

“82. Reports of arrests, seizures and searches.- Every Police Officer upon making any arrest, search or seizure shall submit a report to the Collector and to the excise officers empowered under Section 73 within twenty four hours.”

It is apparent from the provisions under Section 73 of the Act that the seizure of the vehicle can be made on substantive satisfaction as Section 73 of the Act does not prescribe the fixed parameters for seizing a vehicle. Section 73(d) and (e) suggest that any Excise Officer or any police officer not below the rank of Sub Inspector can make search and seizure.

Section 56 of the Act prescribes the conditions in which any thing can be liable to confiscation. 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.

Section 56(d) of the Act which is *pari materia* same as Section 56(b) of the Amended Act of 2018 which mandates that any animal, vehicle, vessel or other conveyance used for carrying the liquor or intoxicant is liable for confiscation.

Section 58(1) of the Act mandates the procedure of confiscation by the District Collector which starts with non-obstante clause and suggests that notwithstanding anything contained in the Act, where anything is liable for confiscation under the Act, is seized or detained, 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. Section 58(2) of the Act suggests that when the District Collector is satisfied that an offence under the 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. Section 58(3) of the Act suggests that the Collector, before passing an order under Section 58(2) of the Act, shall give reasonable opportunity of being heard to the person concerned.

Section 78 of the Act stipulates that the investigation under the Act can be done by Excise officer or by a police officer not below the rank of Sub Inspector of Police.

The FIR in the present case was registered on 31.3.2019 and the seizure was made on the same day by the ASI of Police Madanlal Gupta, which is contrary to the provisions under Section 73(e) of the Act which mandates the seizure to be made by an officer not below the rank of Sub Inspector of Police. There is nothing on record to suggest that any report was submitted to the Collector or the Excise officer with regard to arrest, search and seizure.



Admittedly, there is no recovery from the vehicle in question. Section 56(d) of the Act clearly mandates that the vehicle would be liable to confiscation only when intoxicant or liquor is being carried through it. There is no accusation that liquor was being carried. It is only a case of drunken driving in public place, which is prescribed under Section 37 (b) of the Act. Hence, if the seized vehicle was not liable to confiscation under Section 56(b) of the Act, then there is no requirement of transmitting a report by the seizing officer or detaining officer under Section 58 (1) of the Act to the Collector. There is specific statement in paragraph 12 of the petition as quoted above that no confiscation proceeding has been initiated and this fact has not been controverted by the learned counsel for the respondents.

In such circumstances, the vehicle in question can only be kept in seized condition for being used as material exhibit during trial.

Keeping the vehicle in such condition and allowing it 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.

A Division Bench of this Court while considering the case of drunken driving in the case of Diwakar Kumar Singh Vs. The State of Bihar and Ors., 2018(3) PLJR 403, held that it shall be mandatory for the confiscating authority to decide the issue 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 then it has to decide as a preliminary issue whether in such a condition the vehicle is liable for confiscation under Section 56 of the Act. Relevant portion of the order reads as follows:

“.....That apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order with regard to



confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings shall be prohibited.

We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of liquor.

The issue shall be decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

It shall be the duty of the Advocate General to communicate this order to each and every District Magistrate and inform the Registrar General of this Court. In spite thereof, if we find that the District Magistrates are passing confiscation order without addressing this issue first, we may consider initiating contempt proceedings against the concerned District Magistrate.”

The order of the Division Bench reflects that the Advocate General was directed to communicate the order to all the District Magistrates but in none of the cases, we have come



across, we find that any District Magistrate has decided the issue, as to whether the vehicle is liable for confiscation under Section 56 of the Act, as a preliminary issue before passing a final order on confiscation.

There is no doubt that the provisions of the Act are stringent. Section 60 of the Act bars the jurisdiction of any Court in confiscation, which reads as follows:

“60. Bar of jurisdiction in confiscation.—
Whenever any liquor, material, still, utensil, implements or apparatus or any receptacle, package, any animal cart, vessel, or other conveyance used in committing any offence, is seized or detained under this Act, no court shall have, notwithstanding anything to the contrary contained in any other law for the time being in force, jurisdiction to make any order with regard to such property.”

Even if the vehicle is not liable for confiscation then the Special Judge under the Act in view of the bar under Section 60 of the Act does not have the jurisdiction to direct for the release of the vehicle. However, such bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India, since such power is required to be exercised in the given prevailing 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.”

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 by virtue of relevant provisions, 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 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 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)

sanjeev/-Anil/

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08/01/2020
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