

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.609 of 2020

=====

Shobha Singh, Wife of Bhim Singh, Resident of W. No.45, Chandi PD Lane,
Sikandarpur, P.S.- Mozahidpur, District- Bhagalpur at present resident of
Village- Lahri Tola, Ali Murtaja Road, P.S.- Jagdishpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The District Magistrate, Bhagalpur.
3. The Superintendent of Police, District- Bhagalpur.
4. The Sub Divisional Police Officer, Sadar Bhagalpur, District- Bhagalpur.
5. The Station House Officer, Jagdishpur, District- Bhagalpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shiwesh Chandra Mishra, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC-11

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 16-01-2020

Heard Mr. Vyash Kumar Mishra, learned counsel
for the petitioner and Mr. Rewati Kant Raman, learned A.C. to
SC-11 for the respondent-State.



The present writ application has been filed for quashing of the order dated 26.07.2019 passed by the District Magistrate, Bhagalpur in Misc (Excise) Case No. 159 of 2018-19 passed by the Collector, Bhagalpur whereby the XT Zest Tata vehicle bearing Registration No. BR10Y-8444 has been confiscated which was seized in connection with Jagdishpur P.S. Case No. 234 of 2018, registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act'). The relief prayed for, as stipulated in paragraph no.1 of the writ application reads as follows:-

“1. That this writ application is being filed for the following reliefs ;-

I. For quashing the order dated 26.07.2019 passed by the District Magistrate, Bhagalpur in Misc (Excise) Case No. 159/2018-19 whereby and whereunder the petitioner vehicle (Car) has been confiscated.

ii. For directing the respondent authorities to release the petitioner Vehicle (Car) bearing No.BR 10Y-8444 seized by the police in Jagdishpur P.S. Case No. 234 of 2018.

iii. Any other relief or reliefs as your lordships may deem fit and proper in the interest of justice.”

The prosecution case got initiated on the basis of self statement of of S.I. Niraj Tiwari, S.H.O., Jagdishpura Police Station is to the effect that on 09.05.2018 at 9.30 A.M. after



having received secret information that illicit liquor is being transported, started vehicle check and intercepted two vehicles. During frisking, from XT Zest Tata car, 76.53 litres of Indian Made Foreign Liquor and from the Maruti vehicle, 103.275 litres of Indian Made Foreign Liquor were recovered, leading to registration of Jagdishpur P.S. Case No.234 of 2018.

It is submitted by learned counsel for the petitioner that the petitioner claims to be *bona fide* owner of the seized XT Zest Tata vehicle in question and a copy of the registration certificate of the seized vehicle has been brought on record, as Annexure-2. It is further submitted that confiscation proceeding against the vehicle in question has been initiated on 04.09.2018 and now vide the impugned order dated 26.07.2019, the vehicle of the petitioner has been confiscate and the Superintendent, Excise, Bhagalpur was directed to sell the vehicle in question by putting it in open auction sale and after that deposit the money in the treasury, hence, the petitioner has prayed for quashing of the final order.

Learned SC-5 submits that the vehicle in question has already been confiscated, vide order dated 26.07.2019, passed by the Collector-cum-District Magistrate, Bhagalpur, in Misc.(Excise) Case No.159/2018-19 and there is provision of



appeal against the final order passed by the Collector within ninety days before the Excise Commissioner by virtue of Section 92(2) under Chapter IX of the Act.

Considering the fact that the final order has been passed by the Collector in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal against the order passed by the Collector within ninety days before the Excise Commissioner by virtue of Section 92(2) under Chapter IX of the Act, hence, this Court is not inclined to interfere in the matter.

It is well settled law that the discretionary jurisdiction under Article 226 of the Constitution of India is subject to self-imposed restriction and such discretion can be normally exercised when there is no alternative efficacious remedy available or 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 under challenge. The Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1 has held 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.”

Accordingly, this writ application is disposed of with a liberty to the petitioner to prefer an appeal within a period of four weeks along with an application for condonation of delay. If such appeal is filed by the petitioner, the appellate authority is expected to consider the application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a



period of ten weeks from the date of its filing.

Needless to say, in case the vehicle in question has not been auctioned sold till date, it will not be put on auction sale till the disposal of appeal before the appellate authority, if so filed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.01.2020
Transmission Date	NA

